THIRTIETH CONGRESS—FIRST SESSION.

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HOUSE OF REPRESENTATIVES.

CHEROKEE INDIANS.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication from the Secretary of War, and a report from the Commissioner of Indian Affairs, in relation to the Cherokee Indians.

May 20, 1848.

Referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives:

I transmit, for the information of Congress, a communication from the Secretary of War, and a report of the Commissioner of Indian Affairs, showing the result of the settlement required by the treaty of August, 1846, with the Cherokees, and the appropriations requisite to carry the provisions of that treaty into effect.

JAMES K. POLK.

Washington, *May*, 19, 1848.

War Department, *May* 18, 1848.

Sir: I have the honor to submit, for transmission to Congress, for the information of that body, and in order that the requisite appropriations may be made, a report of the Commissioner of Indian Affairs, in relation to the settlement required to be made with the Cherokees, by the treaty with them of August, 1846, and showing the amounts yet necessary to carry the provisions of that treaty into effect.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

To the President.

Report of the Commissioner of Indian Affairs to the Secretary of War, communicating the result of the settlement with the Cherokees, required to be made by the treaty of August, 1846.

War Department,
Office of Indian Affairs, May 10, 1848.

Sir: By the ninth article of the treaty with the Cherokees, of August, 1846, "the United States agree to make a just and fair settlement" with those people, under the treaty of New Echota, of December, 1835, which "shall exhibit all money properly expended under said treaty, and shall embrace all sums paid for improvements, ferries, spoliations, removal, and subsistence, and commutation therefor, debts and claims upon the Cherokee nation of Indians for the additional quantity of land ceded to said nation, and the several sums provided in the several articles of the treaty to be invested as the general fund of the nation; and also, all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of six millions six hundred and forty-seven thousand and sixty-seven dollars, and the balance thus found to be due shall be paid over, *per capita*, in equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835, and the supplement of 1836, being all those Cherokees residing east at the date of said treaty, and the supplement thereto."

It was the desire of the department to have this settlement made in time to submit the result to Congress at the last session; and an investigation of the various points involved was commenced with that view. As, however, it was to include all sums which might, after the treaty of 1846, be "properly allowed and paid under the provisions of the treaty of 1835," and claims to a large amount under that treaty were under investigation by commissioners appointed under its 17th article, it was necessary to await the result of the final action of those commissioners, in order to embrace any allowances made by them, and chargeable to the funds on hand under the last mentioned treaty. There were also numerous claims which had been presented for commutation of removal and subsistence, by Cherokees who had emigrated and subsisted themselves, and which, if allowed, would have to be embraced in the settlement. Time was required for collecting information in relation to these claims, and for their proper investigation. In consequence of these and other circumstances, the desire of the department could not be accomplished.

In the third article of the treaty of 1846, it is stated that "certain claims have been allowed by the several boards of commissioners heretofore appointed under the treaty of 1835, for rents, under the name of improvements and spoliations, and for property of which the Indians were dispossessed, provided for under the 16th article" of that treaty; and that "a further amount has been allowed for reservations under the treaty of 1835 by said commissioners;" and it is assumed that the amounts thus allowed, together with "the expenses of making the treaty of New Echota," were wrongfully paid out of "the $5,000,000 fund" under that treaty; and, therefore, the "United States agree to reimburse the said fund the amount thus charged to said fund, and the same shall form a part of the aggregate amount to be distributed to the Cherokee people, as provided for in the 9th article of this treaty."

The statement in regard to the expenses of making the treaty of New Echota is an error; they were not paid out of "the five million fund," but from a special appropriation therefor made by Congress on the 2d July, 1836. See Laws United States, vol. 9, page 453; and it remains to be seen how far, upon a proper classification and arrangement of the expenditures under the treaty of 1835, with reference to the appropriations for carrying it into effect; the other objects above referred to can properly be considered as having been paid out of that fund, and the United States bound to reimburse the amount.

In making the expenditures under the treaty of 1835, but little, if any, attention appears to have been paid to the heads of appropriation from which the money was taken. The funds stipulated in the treaty, and the additional amounts granted by the supplement and by appropriations of Congress, seem to have been regarded as one general aggregate fund, out of which all the expenses of carrying the treaty into effect were to be paid; and that it therefore made no difference whether the money for any one object came from the appropriation for that object or from another. In this way payments were made out of the "five million fund," for objects intended to be met by the additional amounts allowed and appropriated as above, and the reverse. This has led to much misunderstanding and error, which would have been cleared up on a proper final settlement under the treaty of 1835. And in order now to render the whole subject plain, and susceptible of being easily understood, it is necessary to set forth the various objects of expenditure under that treaty, the funds provided to meet them, to what extent they were to be paid for by the United States and the Cherokees, respectively, and how far, on a proper classification of expenditures, with reference to the funds belonging to the Cherokees, and those provided in addition by the government, this may be regarded as having been done. The account thus stated will be a "just and fair settlement" under the treaty of 1835-'6, as required by the 9th article of the treaty of 1846.

By the first article of the treaty of 1835, the Cherokees, for and in consideration of the sum of $5,000,000, cede, relinquish, and convey to the government "all the lands owned, claimed, or possessed by them, east of the Mississippi river; and hereby release all their claims upon the United States for spoliations of every kind."

By the 15th article, it was expressly understood and agreed "that, after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims for spoliations, removal, subsistence, and debts, and claims upon the Cherokee nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums to be invested for the general national funds, provided for in the several articles of this treaty, the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation, east, according to the census just completed."

The various articles of the treaty of 1835–'6, embracing the objects specified in the 15th article, are as follows: By the 9th article "the United States agree to appoint suitable agents, who shall make a just and fair valuation of all such improvements, now in the possession of the Cherokees, as add any value to the lands; and also of the ferries owned by them, according to their net income; and such improvements and ferries from which they have been dispossessed in a lawless manner, or under any existing laws of the State, where the same may be situated."

The claims for spoliations are thus provided for in the last clause of the tenth article: "The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoliations of every kind that have not been already satisfied under former treaties." By the first article of the treaty, the question was to be submitted to the Senate whether this charge was to be borne by the Cherokees, out of the consideration for the lands, or by the United States.

Removal and subsistence are provided for in the eighth article, as follows: "The United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them one year after their arrival there, and that a sufficient number of steamboats and baggage wagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician, well supplied with medicines, shall accompany each detachment of emigrants removed by the government. Such persons and families as, in the opinion of the emigrating agent, are capable of subsisting and removing themselves, shall be permitted to do so; and they shall be allowed, in full for all claims for the same, twenty dollars for each member of their family; and in lieu of their one year's rations, they shall be paid the sum of thirty-three dollars and thirty-three cents, if they prefer it."

The last clause but one of the tenth article provides that "the United States also agree and stipulate to pay the just debts and claims against the Cherokee nation held by the citizens of the same, and also the just claims of citizens of the United States for services rendered to the nation, and the sum of sixty thousand dollars is appropriated for this purpose; but no claims against individual persons of the nation shall be allowed and paid by the nation." The Attorney General decided that, according to a just construction of this clause, the $60,000 thus set apart was applicable only to claims of citizens of the United States against the nation, and could not be exceeded for that purpose, but, if insufficient to embrace all just claims of that character, it must be rateably divided among the claimants. See Attorney General's opinions, pp. 1113–'14. This construction is no doubt correct, the object being to fix a limit to the amounts to be paid for debts alleged by white persons against the nation. The debts due their own citizens, to be paid out of the general fund, were left without any such limit.

The compensation for the additional quantity of land to be added to the Cherokee country west of the Mississippi, is fixed in the last paragraph of the second article at $500,000. By the last paragraph of the twelfth article, the sum of $100,000 was to be expended for the goods for the poorer class of Cherokees, referred to in the fifteenth article.

"The several sums to be invested for the general national funds" are specified in the tenth article, as follows: $200,000 "to constitute a general fund;" $50,000 "to constitute an orphans' fund," and $150,000 "to constitute a permanent school fund"—in all $400,000; to which the last clause of the fourth article of the supplement transferred and added the $100,000, set apart by the last clause of the twelfth article of the treaty for "the poorer class of Cherokees," thus making the amount to be invested out of the consideration for the land, as general national funds, five hundred thousand dollars.

As the treaty originally stood, when negotiated, it is evident that it was the intention that all the objects specified in the 15th article, (unless the Senate should determine otherwise with regard to spoliation,) were to be provided for out of the "five million fund." It is true, that in several of the articles of the treaty that have been quoted or referred to, the government stipulated to do certain things involving expenditure; in the eighth, to remove and subsist the Cherokees for one year, and in the tenth, to pay the just debts and claims against the Cherokee nation, &c.; but these were not to be at the expense of the United States, for the 15th article expressly provides that the amounts expended for them shall be deducted from the general fund of $5,000,000. In all such cases, the United States were to perform the acts and to make the expenditures, as the agents or trustees of the Cherokees. Wherever it was intended that the government should bear the expense of any object, it is so specifically provided.

If there were any doubt as to the objects to be paid for out of the Cherokee fund, it would be dissipated by the correspondence with the head men of the nation about the time the treaty was negotiated. See House Doc. No. 286, 1st session 24th Congress, and Senate Doc. No. 120, 2d session 25th Congress. The first of these documents contains the *projet* of the treaty of 1835–6, as it was agreed upon with the delegation of Cherokees in this city; and although, in the negotiation, this *projet* was slightly altered in some of the details, it shows clearly the objects to which the $5,000,000 to be given for the lands—or rather as the difference in value between them and those assigned to the Cherokees west—was to be applied. See the schedule at page 39, which specified those objects, among which were removal and subsistence. In the latter document, pages 97 to 104, are the instructions of the Secretary of War to the commissioners appointed to negotiate the treaty, and at page 108, a letter to Messrs. Underwood and Ridge, in which it was stated, by direction of the President, that "no proposition for a treaty will hereafter be made more favorable than those now offered to them."

The first of the supplementary articles to the treaty of 1835, declared void the pre-emption privilege stipulated in the 12th article of that treaty, and the grant of reservations in the 13th article. The first article of the treaty and the second of the supplement, provided for the submission to the Senate, for decision, the question whether the $5,000,000 granted for the lands was to include the $300,000 specified for spoliations, the cost of the removal of the Cherokees west of the Mississippi, and "the value of certain claims which many of their people had against citizens of the United States." If not, then additional provision was to be made for those objects. Hence the 3d article of the supplement, which stipulated that "the sum of six hundred thousand dollars shall be, and the same is hereby, allowed, to include the expense of their removal, and all claims of every nature and description against the government of the United States, not *herein* otherwise expressly provided for, and to be in lieu of the said pre-emptions and reservations, and the sum of three hundred thousand dollars for spoliations, described in the first article of the treaty."

On the 12th June, 1838, Congress appropriated the further sum of one million forty-seven thousand and sixty-seven dollars, "in full for all objects specified in the third article of the supplementary articles of the treaty of 1835, between the Cherokee Indians and the United States, and for the further object of aiding in the subsistence of said Indians for one year after their removal west: *Provided*, That no part of the said sum of money shall be deducted from the five millions stipulated to be paid to said Indians by said treaty." A hundred thousand dollars were, at the same time, appropriated "for satisfying all claims for arrearages of annuities, for supplying blankets and other articles of clothing for the poorer classes of Cherokees who are not able to supply themselves, and for medicines and medical assistance, and for such other purposes as the President shall deem proper to facilitate the removal of the Cherokees."

Thus, to the $5,000,000 granted to the Cherokees by the first article of the treaty of 1835 for all their lands and possessions east of the Mississippi, the United States afterwards added the further sum of $1,647,067, making in all $6,647,067. The $5,000,000 was liable for all the objects enumerated in the 15th article of the treaty, except spoliations, viz: improvements, ferries, removal, subsistence, debts and claims against the Cherokee nation, the amount to be deducted for the additional quantity of lands to be given to the Cherokees west of the Mississippi, and the amounts to be invested as a national fund. The $600,000 granted by the 3d article of the supplement was to be in lieu of the rights to pre-emptions and reservations provided for in the 12th and 13th articles of the treaty, and declared void by the first article of the supplement, and, of the $300,000 stipulated for spoliations by the first article of the treaty, was to be applicable to the expenses of removal, and was to include "all claims of every nature and description, against the government of the United States, not *herein* otherwise expressly provided for." The $1,047,067 was to be "in full for all objects specified in the third article" of the supplement, and for the additional purpose of aiding in the subsistence of the Cherokees for one year after their removal. With respect to the objects to which the $5,000,000 was applicable, there can be no question, as they are specifically named; but about those embraced in the $1,647,067, and the intention and effect of the grant of this additional sum, there has been, in the minds of many, much doubt and misunderstanding. It has been contended that, in making this grant, the United States assumed the whole expense of the removal and subsistence of the Cherokees, and thereby relieved the five million fund from any charge for those objects. This, however, was not the case, and has never been so considered by the department.

The question was raised whether the spoliations, the cost of removal, and claims which many of the Cherokees had against the United States, were to be paid for out of the consideration money for the lands. This question having been submitted to the Senate, it was agreed to allow the additional sum of $600,000 towards those objects; and in lieu of the annulled grant of pre-emptions and reservations. This was not an assumption by the government of the whole cost of removal and of all the spoliation and other claims against the United States, but only an extension and increase of the consideration money, with reference to those objects. Had the former been intended, an estimate would have been made of the probable cost of removal, and of the probable amount of the claims, (except the spoliations, which were limited by the treaty to $300,000,) in order that the additional amount to be allowed might be made to embrace all; but this was not done.

It was a compromise between the government and the Cherokees, by which matters in dispute were finally arranged and settled; the latter contending that the former should pay the amount fixed upon for the spoliation claims, over and above the sum agreed upon for the lands, and giving up, for a further pecuniary consideration, the right to pre-emptions, and the grant of reservations, and all other claims "not herein otherwise expressly provided for," and the government agreeing to add a further sum for these objects, and to aid in defraying the expense of removal. It was, in effect, an increase of the consideration money granted, and an addition of other objects to those specified in the 15th article of the treaty, to be paid for by the Cherokees out of that consideration. On this point, and as to the object and intent of the further allowance of $1,047,067, made by the act of June 12th, 1838, without adverting to other ample evidence to the same effect, it is deemed sufficient to present the following views of the commissioners appointed by the President, in July, 1846, to inquire into the difficulties then existing among the Cherokees, and all matters in dispute between them and the United States; who, under a subsequent appointment, negotiated the treaty of 1846, and whose report and conclusions, in a great measure, formed the basis of that treaty.

Those commissioners say, "that nothing more was intended to be paid by the United States for the possessions of the Cherokees, east of the Mississippi, than the sum of $5,000,000, is rendered certain by the letter of General Cass, Secretary of War, dated March 7, 1835, in reply to the delegation headed by John Ross. That delegation, under date of March 6, 1835, inquire of General Cass, 'whether we are to understand from your communication of this date, that the five millions resolved by the Senate should be paid to the Cherokee Indians for all their land and possessions east of the Mississippi river, as embracing also the expenses of transportation and subsistence in removal, and for subsistence for twelve months after their arrival at their new homes, for blankets, guns, &c.; or whether that sum is an offer, as really appears from the resolution to be, only for the extinguishment of the Cherokee title to lands east of the Mississippi river, and for the houses and improvements of the Cherokee inhabitants situated thereon; and that the United States will in addition pay the expenses of transportation and subsistence in their removal,' &c. To which General Cass replied, that 'the sum of $5,000,000 which is offered for your claims east of the Mississippi will, as I have already informed you, *be in full for your entire cession.* The application of it will be such as you desire; a just regard being had to individual rights. *Nothing more will be paid for removal, or for any other purpose or object whatever.* In giving to you the full value of your property, the United States comply with all the demands of justice upon them.'

"Thus, so far, there could be no misunderstanding as to the purposes of the United States, in reference to the amount to be paid for the lands of the Cherokees east of the Mississippi, nor as to the objects to which it was to be appropriated.

"The talk sent by General Jackson to the Cherokee people, under date of March 16, 1835, takes the same view of the subject, and mentions generally the objects to which the money is appropriated. (See House doc. 286, 1. ses. 24. Cong., pp. 41, 42, and 43.)

"We have thus shown what was the understanding of the parties in reference to the matter prior to the treaty of 1835. We now come to the treaty, and we find the same understanding substantially recognized, although varied in some not essential particulars. In the 15th article of that treaty it is expressly acknowledged and agreed that 'the amount which shall be actually expended for the payment for improvements, ferries, claims for spoliations, removal, subsistence, debts, and claims upon the Cherokee nation, and for the additional quantity of lands, [the 800,000 acres to be added to the country west of the Mississippi,] and goods for the poorer classes of Cherokees, and the several sums to be invested for the general national funds, provided for in the several articles of this treaty,' shall be deducted from the purchase money, and the balance, whatever it may be, shall be divided equally between all the people belonging to the Cherokee nation east, according to the census then just completed.

"An additional sum of $600,000 was added to the $5,000,000 by the third supplemental article of the treaty; and the further sum of $1,047,067, appropriated by the act of June 12, 1838, for removals, subsistence, &c., as before stated, all which constituted one general sum of $6,647,067, upon which the sums expended for the objects recapitulated in the 15th article of the treaty were chargeable.

"It is now argued by the counsel for the western portion of the Cherokee people, including the Ross and treaty parties, that, inasmuch as the sum of $1,047,067, appropriated by the act of June 12, 1838, was given by Congress for removal and subsistence, the United States thereby assumed those two items of expenditure, and of course, relieved the five million fund from any charge for those two objects.

"To put an end forever to that argument, the undersigned copy from the report of Judge White, Senate doc. 466, 2d sess. 25. Cong., before referred to, the following extract:

"They believe the five millions of dollars, given by the treaty, as the difference in value between the countries exchanged, and the six hundred thousand dollars before mentioned, allowed for spoliations, and as a fund for removal, constitute a very liberal consideration on the part of the federal government; yet the committee would feel much better satisfied that too much should be done for the Cherokees than too little. If, therefore, the voluntary grant of an additional sum of money can be made a means of *hastening* their removal to their new homes, of dispensing with the use of a large military force, and of insuring confidence in the justice of the government, and of restoring harmony and good feelings, they believe economy, humanity and peace will be best consulted by making such grant.

"With a view to attain these objects, the committee would respectfully recommend to the Senate that, in the passing of some appropriation bill still to be acted on, an item be inserted placing a reasonable sum of money at the disposal of the Executive."

"Thus it appears that the large appropriation of $1,047,067 was a '*voluntary grant*,' made for the purpose of hastening the removal of the Indians, of dispensing with the large military force employed in that country, and restoring harmony and good feelings between all parties, and not for the purpose contended for by the counsel.

"The expenditures specified in the 15th article are, therefore, justly chargeable upon the treaty fund."

As the treaty of 1835 stood, prior to the adoption of the supplement, the expenditures for all the objects provided for in it were to be paid out of the consideration money granted the Cherokees, as stipulated in the 15th article, except the following:

1. Extinguishment of title to reservations within the country west assigned the Cherokees, granted to certain half breeds in the Osage treaty of 1835, 4th article, 1st clause treaty of 1835–'6.

2. Valuation to be made of improvements on Union and Harmony missionary reservations, same article, 2d clause.

3. Commutation of permanent annuity of $10,000, 11th article.

4. For certain reservations obtained under former treaties, per 13th article, viz:

1. Value, as unimproved lands, of those which had been sold by the United States; of this class, there were none.

2. Value of those which the owners were obliged by State laws to abandon.

3. Where they had purchased them back from the States, the amount paid the States therefor, with interest thereon, was to be paid their owners.

4. The reservations which they had properly acquired and then held, were to be confirmed to those owning them.

5. Pensions to warriors on the side of the United States in the late war with Great Britain, 14th article.

6. Losses and damages in consequence of not being put in possession of "improvements and houses," of which the owners had been dispossessed prior to the treaty, 16th article.

7. Same on account of being ousted, after the date of the ratification of the treaty of "possessions and property," in the "free use and occupation" of which they were to be protected for two years from that date, during which they were to remove, same article; to which the 5th article of the supplement added,

8. Expenses of negotiating the treaty and supplement, and of the delegation of Cherokees which signed the latter.

It may be said that it was not stipulated that the compensation to the committee of Cherokees, provided for in the 3d clause of the 12th article, was to be paid out of the consideration money. True, it was not so specifically stipulated; but, as has been repeatedly decided by all the proper authorities, this expense was clearly a part of that for other objects so stipulated. The committee acted on behalf of the Cherokees and for their especial benefit, and were of great advantage to them in aiding to protect their funds against unjust and unfounded claims, towards which their individual and local knowledge essentially aided. All claims upon the fund, to be adjudicated by the commissioners under the 17th article of the treaty, underwent their revision and scrutiny before being decided by those commissioners, especially claims to improvements, &c., stipulated to be paid for out of the five millions. They were not agents of the United States, but of the Cherokees; their compensation was a part of the expense of such objects; and, therefore, clearly payable out of that fund. The same is the case with respect to agents and interpreters employed to value the improvements; their compensation was a part of the expense of ascertaining such value; and with it, as also repeatedly decided, properly payable out of the fund. So with regard to superintendents of emigration, and agents and interpreters employed in collecting and removing the Indians, and in subsisting them when collected on the route, and for a year west. Their compensation was a necessary part of the expense of removal and subsistence, which was to be borne by the Cherokees themselves out of their own funds. They were agents, &c., of or for the Cherokees, like the Cherokee committee, valuing agents, &c., and not of the United States. The same view might, to some extent, be taken with respect to the commissioners, under the 17th article of the treaty, to examine and settle claims against the treaty fund, and against individual Cherokees, payable out of the amount allowed for their improvements and ferries; but as it was also their province to examine claims for reservations, and to decide upon their value, payable by the United States, the government, at an early period, determined to assume and pay their compensation, and that of their secretary and interpreter, and this determination has been conformed to throughout. How was this understanding as to expenditures, payable, respectively, by the Cherokees, out of the consideration given them for the exchange of lands, and by the government out of its funds, affected and changed by the supplement and the act of June 12, 1838, appropriating the additional sum of $1,047,067, which act may be considered as an enlargement of the supplement, and, in fact, as a part of it?

The first article of the supplement annulled the pre-emption rights stipulated in the 12th article of the treaty, and the grant of reservations in the 13th article; thus adding another class of reservations to those to be paid for. The third article relieved the $5,000,000 fund of the charge for spoliations, and allowed the additional sum of $600,000 to include spoliation, to be in lieu of the pre-emptions and reservations annulled in the 1st article; to be applied towards the expenses of removal, and to include "*all claims of every nature and description* against the government of the United States, not *herein* otherwise expressly provided for."

In the voluntary grant of the $1,047,067, made by the act of June 12, 1838, the $5,000,000 was further partially relieved, by its being provided that a portion of that sum was to aid in the expense of subsisting the Cherokees for one year after their arrival west; otherwise, it was for the objects specified in the third article of the supplement, and to be in full for them.

Of the objects which, by the treaty itself, as it stood prior to the supplement, were to be paid for by the United States, those embraced under the 1st, 2d, 3d, 5th, and 8th heads of the preceeding classification thereof were provided for, and paid out of separate or special appropriations. Did the supplement, and the additional sums granted by it, and the act of July 12, 1838, in all $1,647,067, include and make provision for those under the 4th, 6th, and 7th heads of that classification? It appears clearly to have been so decided, both by the Executive and Congress. On this point, and on the subject of the properconstruction of the treaty generally, especially with reference to expenditures, see the able and elaborate report of my predecessor to the Secretary of War, dated November 29, 1839, from which pertinent extracts might be taken, but that it may easily be consulted, (see reports House of Representatives, 1st session, 28th Congress, No. 391, pages 26 to 38,) and that I am desirous to make this exposition as brief as is compatible with doing justice to the perplexed and important subject to which it relates.

It will be seen from this document, page 23, that, by the instructions to the second board of commissioners appointed under the 17th article of the treaty of 1835, they were not to issue certificates for the amounts allowed by them, as it was apprehended there might be a deficiency in the funds on hand to meet the entire amount of the allowances; but they were first to report the cases decided to the department in order, in that event, that there might be a proper rateable division of the funds among the claimants. On a review of the decisions of the commissioners in the cases so reported, the department was of opinion that they had acted upon some of which they had no jurisdiction, and in others had manifestly made improper allowances for which the funds were not liable; and in such cases it declined to confirm and carry out their decisions. The claimants appealed to Congress, and the whole subject of the jurisdiction of the commissioners, and the obligation of the Executive to pay their awards out of the funds on hand was fully and elaborately examined and reported upon by a committee of the House, whose report (391) is part of the document above referred to. At the preceding session a joint resolution had passed both Houses, directing the payment of the awards of the commissioners. This resolution was not signed by the President, because, as stated by him, "the balance of the fund provided by Congress for satisfying claims, under the 17th article of the Cherokee treaty, referred to in the resolution, is wholly insufficient to meet the claims still pending. To direct the payment, therefore, of the whole amount of those claims which happened to be first adjudicated, would prevent a rateable distribution of the fund among those equally entitled to its benefits. Such a violation of the individual rights of the claimants would impose upon the government the obligation of making further appropriations to indemnify them, and thus Congress would be obliged to enlarge a provision, liberal and equitable, which it had made for the satisfaction *of all the demands of the Cherokees*." Congress, however, differed in opinion with the President, as to the propriety of withholding payment until all the claims had been decided, and, upon the report referred to, re-enacted the joint resolution directing the payment of the awards of the commissioners out of the funds on hand. The commission having by this time been terminated, and the amounts allowed by them being ascertained to be less than the balance on hand, the objection urged by the President against the former resolution no longer existed, and the second was therefore signed by him. These awards were for claims of various kinds, and embraced among others those of the classes which, by the treaty, were to be paid for by the United States. In like manner a joint resolution has been passed during the present session of Congress, directing that the claim of Betsey McIntosh, a Cherokee, to the value of a reservation allowed by the last board of commissioners, under the 17th article of the treaty of 1835-'6, should be paid out of the funds on hand, thus further confirming the construction that the appropriations which have been made embraced and provided for the objects specially stipulated in the treaty to be paid for by the United States. Thus it appears to have been conclusively settled that the additional amount allowed by the supplement and the act of June 12, 1838, included and made provision for all claims against the United States, which were not otherwise provided for by separate and special appropriations. The reason of the discrimination in the manner of making provision for claims to be paid by the United States, viz: the making special appropriations for some of these objects and including the others in the general amount allowed by the supplement, (the appropriation of June 12, 1838, being considered a part of it,) is plain. The pensions were obligations upon the United States wholly independent of the treaty, and, as such, were a part of our general pension system. The commutation of the permanent annuity was also an extraneous and independent matter, having no necessary connexion with the treaty—with the cession of the lands east, the removal of the Indians, or any other of the necessary arrangements under the treaty. It was simply an agreement for putting in a different shape an obligation upon the government under other treaties. In regard to the other two items, the Osage reservations and the missionary improvements, the amount in the one case was known, and in the other could easily and soon be ascertained. They had no connexion with the great object of the treaty—emigration—and could in no way interfere with it. This was not the case with the other items—reservations, and losses, and damages. The amounts required for these were uncertain and unknown; no estimate could be made, and no appropriation asked for them. Their settlement and payment had an immediate and important bearing upon the policy of emigration, which it was all important should go on as rapidly as possible, in order that the general government might be relieved, at as early a period as practicable, from the embarrassing position in which it was placed towards the States where the Indians were; a position which had been extremely critical, and which had, at one time, involved the most momentous consequences. The Indians could not be expected to remove until their reservations, and losses, and damages, were ascertained and settled. To ascertain the amounts required for them, and then obtain the necessary appropriations, would have produced much delay, which it was of great importance to avoid, in order that the Indians might remove at once. Hence, under these circumstances, and like the pre-emptions and reservations, which were to have been confirmed, they were compromised and provided for in the $600,000 additional allowed by the 30th article of the supplement, increased by the further grant in the appropriation act of June, 1838, to $1,647,067. And hence the general and comprehensive provision in that article, that that sum was to "include *all claims of every nature and description* against the government of the United States not *herein* otherwise expressly provided for;" that is, not otherwise provided for in the supplement, as was specially done with respect to claims of several descriptions; the object being to make provision at once for all claims having any bearing upon the policy of early emigration, or in any way likely to interfere with it.

Upon the construction and principles thus set forth, a proper settlement under the treaty of 1835–'6 would be as follows, arranging separately, 1st, the consideration for the lands east stipulated by the treaty, and 2d, the additional amount granted by the supplement and the items properly payable out of them respectively, viz:

1. Consideration stipulated for the lands east		$5,000,000 00
From which deduct the following charges thereupon:		
Amount allowed the United States for the additional 800,000 acres of land west..............................	$500,000 00	
Amount allowed, as the value of improvements and ferries, by the commissioners, under the 17th article, including the expense of valuing agents, and other necessary incidental expenses.........	1,737,567 23	
So much of amount expended for and on account of removal and subsistence, including necessary incidental expenses of enrolling agents, conductors, commissaries, interpreters, &c...................	1,979,198 94	
Amount of claims of citizens of the United States against the Cherokee nation, awarded by the commissioners, under the 17th article	59,574 25	
Amount of claims of Cherokees against the same, in the form of national due-bills, or debts, awarded by same commissioners.......	17,561 41	
Amount invested for the general national funds..........................	500,000 00	
Amount of compensation paid to the Cherokee committee, provided for under 12th article	22,026 89	
		4,815,928 72
Balance..		184,071 28

[illegible] 13/3/49
Imp — 1,540,572.27
Ferries — 159,572.12
1,700,144.39

2. Additional amount allowed by supplement and act of June 12, 1838..................................		$1,617,067 00
From which deduct the following:		
Amount allowed for reservations of all classes by commissioners, under 17th article..................	$256,440 01	
Amount allowed by commissioners for spoliations of all kinds, including "rents" or damages for dispossession of property and im-		

provements, being amount for which it was determined the same would have rented during the period of dispossession, and including, also, the amount of damages allowed Cherokees in consequence of dispossession within two years after the ratification of treaty, during which the Indians were to be permitted to remain	438,095 35	
Amount allowed by commissioners for pre-emptions	15,589 00	
For and on account of removal and subsistence	935,942 64	
		$1,647,067 00

The amount on account of dispossession within the two years after the ratification of the treaty, included in the above sum of $439,095 35, is $47,596 10, the greater portion of which is believed to have been improperly allowed, though the Indians insisted upon it. They were not actually dispossessed; their improvements would be valued, say at an early period within the two years, and they would receive the value, and relinquished them and remove west. They no longer had any right to them, after having been paid for them, and yet the commissioners appear to have allowed them, in addition to their value, the amount which it was estimated the possession of them would have been worth during the whole of the remainder of the two years.

From the foregoing statement are excluded certain expenditures for extraneous objects, arising in the course of the execution of the treaty, which were improperly charged to the funds under and appropriated to carry it into effect. They are as follows, viz:

Amount paid for improvements abandoned under treaty of 1828, which should have been taken out of appropriation made therefor, in June, 1834	$330 26
Amount to Dr. Hetzel for medical services, which should have been paid from appropriation of $100,000 for that and other objects, made June 12, 1838	744 00
Amount paid for benefit of poorer classes of Cherokees, provisions, clothing, &c., which should have been charged to above mentioned appropriation of $100,000	40,644 74
Amount paid to John Smith and James Rogers, delegates from the western Cherokees, present at the negotiation of treaty of 1835–'36, for their trouble and expenses	1,500 00
	43,219 00

According, therefore, to a "just and fair settlement," under the treaty of 1835–'36, upon principles recognized and acted on by both Congress and the Executive, the amount left for per capita distribution to all the Cherokees residing east, at the date of that treaty, is $184,071 28. The Cherokees generally have, no doubt, been led to expect a much larger amount, and will, consequently, be somewhat disappointed at the result. Their erroneous expectations have arisen from the actual and proper state of accounts, and the proper principles of settlement, not having been known and understood, and from the consequent inaccurate representations which have been made upon the subject.

The fact has also probably been lost sight of, that the greater proportion of those entitled to this per capita distribution have received it, or the benefit of a considerable amount of the funds intended for it, in another form. A brief recapitulation of the facts will show that this has been the case; and that, under the circumstances, the government is in no way responsible for the result, unsatisfactory though it may be; it having been brought about by themselves, or the majority of them.

It is well known that the majority of the Cherokees, acting under the influence and advice of their head men, were greatly averse to emigration; they resisted every argument and every persuasive means that could be used to induce them to remove, in accordance with the treaty, which they were told was the law of the land, and which, therefore, the Executive was bound to enforce. They opposed every effort till the last moment they could be permitted to remain, when, in order to carry out the obligations of the treaty, to fulfil the just expectations of the States in which they were, and to prevent collisions, and possibly bloodshed, between them and our own citizens, the government was compelled, at a heavy expense, to send a considerable military force into the country occupied by them, in order to accomplish their removal. This measure had its effect; but from the operation of the same influences, the Indians were still averse to being removed by government agency. They preferred an arrangement for emigrating themselves, and made a proposition to that effect to Major General Scott, who was in command of the troops, and was charged with the removal of the Cherokees. They proposed to undertake the whole business of emigrating their own people, at the rate of $65,880 for every one thousand removed. This General Scott regarded as extravagant, and he requested them to reconsider their proposition, telling them "that the whole expense of emigration is to be paid out of the appropriations already made by Congress, the general surplus of which is to go to the Cherokee nation in various forms;" and that they had, therefore, "a direct general interest in conducting the movement as economically as circumstances will permit." Instead of reducing, they increased the amount; whereupon General Scott said to them, "I perceive, that after a full consideration, you adhere to the calculation of $65,880, with a slight addition for soap, for the comfortable emigration by land of every thousand Cherokees from this to their new country west of the Mississippi; as the Cherokee people are exclusively interested in the cost as well as the comfort of the removal, I do not feel at liberty to withhold my sanction." The Secretary or War, in reply to General Scott upon the subject, took the same view; he was of opinion that the amount was "very extravagant;" that thirty dollars per head had been regarded as sufficient, and that "whatever sum, over and above this amount, that may be expended for this purpose, (removal,) will have to be deducted from the original purchase money agreed to be paid them by the treaty of New Echota, (the five millions,) and this must be fully explained to the chiefs and head men, and ought to be understood by the nation;" that the executive could not recommend to Congress to increase the appropriations made, "believing, as it does, the amount already given to be sufficient for the objects proposed." The Cherokees would agree to no more economical arrangement; and as it appeared to be the only way of effecting a general and satisfactory emigration, if not of avoiding the use of military force and the effusion of blood, the arrangement was agreed to and carried out.

Some time after the emigration had been completed, Mr. John Ross, who was at the head of the committee that entered into the arrangement with General Scott, presented a claim for the alleged cost of emigrating the Cherokees, under that arrangement, over and above the amount stipulated, amounting to the large sum of $581,346 88½. This claim was fully examined into and rejected by the Commissioner of Indian Affairs, Mr. Crawford, and the Secretary of War, Mr. Poinsett. An appeal was taken to the President, Mr. Van Buren, who thought that, on proper evidence of expenditure, the sum of $94,406 68, or so much of it as was supported by proper vouchers, might, in equity, be allowed and paid. The remainder he rejected entirely; and, on a subsequent application, he stated that he considered his previous decision final, and refused to re-open the case. (See Report Committee H. R. No. 1098, 2d session 27th Congress.) It was nevertheless subsequently re opened by another Secretary of War, and the whole amount allowed and paid. (See same document.) It will be seen, however, that this allowance and payment was influenced in a great measure by the fact stated by General Scott, that Mr. Ross and the delegation charged with making the arrangements for the removal, were fully apprised that any excess of expenditure incurred therein would be a charge upon the nation, and by the circumstance that the national counsel authorised Mr. Ross to prosecute the claim and receive the money in behalf of the nation. There was thus paid, for the removal of about 13,149 Cherokees, the large sum of $1,357,745 92, or $103 25 and a fraction for each individual, man, woman and child. Whether this sum was actually absorbed in the mere removal of the Indians or not, it was paid on the demand of the Cherokees themselves; and they must be considered as having enjoyed the benefit of it, in that or some other way, and the amount for per capita distribution was thus materially diminished.

I deem it proper also to state here that the amount charged, in the foregoing settlement, for removal and subsistence, embraces the sum of $172,316 47, for subsistence for five additional months beyond the one year, which was furnished to the Cherokees, under circumstances of destitution and necessity, at their own request and upon the express understanding and condition that the same was to be advanced out of their own funds, under the treaty of 1835–'6. The amount for per capita was thus still further reduced.

By the 9th article of the treaty of 1846, it is provided that "all the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to *five millions six hundred thousand dollars*, (which investments and expenditures are particularly enumerated in the 15th article of the treaty of 1835,) shall be first deducted from the said aggregate sum, thus ascertaining the residuum or amount which would, under such marshalling of accounts, be left for per capita distribution among the Cherokees, emigrating under the treaty of 1835; excluding all extravagant or improper expenditures, and then allow to the old settlers (or western Cherokees) a sum equal to one-third part of said residuum, to be distributed per capita to each individual of said party of 'old settlers' or 'western Cherokees;'" comprising all those west at the date of the treaty of 1835–'6. In ascertaining this "residuum" or balance, it is required that, instead of the amount actually paid for the removal and subsistence of the Cherokees, there shall be deducted only the sum to which the expenditures for those objects would have amounted, at the rates specified in the 8th article of the treaty of 1835; to be paid as a commutation therefor to those who removed and subsisted themselves, viz: $20 for removal and $33 33 for subsistence, or $53 33 for both.

There is an evident inconsistency in that portion of the fourth article above quoted. The $5,000,000 was granted by the first article of the treaty of 1835, and the $600,000 by the third article of its supplement. The investments and expenditures, enumerated in the 15th article of the treaty, do not embrace all that are properly chargeable upon those sums; for the 3d article of the supplement specifically provides for the application of a portion of the $600,000 to objects not specified in the 15th article of the treaty, as has already been shown. "The investments and expenditures which are properly chargeable upon" the $5,600,000, cannot, therefore, be restricted to the objects "particularly enumerated in the 15th article of the treaty," but must be regarded as including all for which, by the terms of the treaty and the supplement, that sum was intended to provide.

The settlement with the old settlers, or western Cherokees, would therefore be as follows, classifying the funds and the objects of expenditure in the same manner as that already adopted in making the settlement under the treaty of 1835–'36:

1. Consideration for the lands and possessions east		$5,000,000 00
From which deduct the following:		
Consideration for the 800,000 additional acres of land west........	$500,000 00	

Amount allowed for improvements and ferries prior to the date of the treaty of 1846....................	1,732,232.23	
Claims of citizens of the United States against the Cherokee nation..........................	59,574.25	
Claims of individual Cherokees against the same.................	17,561.41	
Compensation of Cherokee committee........................	22,026.89	
Investments as national funds......	500,000.00	
On account of removal and subsistence, at the rate of $53 33 per head...........................	909,313 34	
		3,740,708 12
Balance....................................		1,259,291 88

Total am[illegible]

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2. Additional amount allowed by third article of supplement..		$600,000 00
From which deduct the following:		
Spoliations, including "rents" and damages, as previously set forth, allowed prior to date of treaty of 1846............................	$434,861 85	
Reservations allowed for prior to same date......................	116,882 50	
Pre-emptions allowed for prior to same date......................	15,589 00	
For and on account of removal and subsistence.....................	32,666 65	
		600,000 00

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Thus the "residuum," ascertained in the manner directed by the treaty of 1846, is $1,259,291 88; of which the old settlers are entitled to one-third, which is $419,763 96.

This amount, according to the fourth article of that treaty, is to be paid by the United States in consideration of the relinquishment, by the old settlers, of the interest which that instrument decided they had in the country east, but which interest was not embraced and provided for by the treaty of 1835–'36. This will make the whole cost to the government of the purchase of the country and possessions of the Cherokees east, exclusive of the value of the country given them west, and of the large expenditures for the military force which the perverse conduct of the Cherokees rendered it necessary to send into their country to remove them, the enormous sum of $7,539,065 44.

Viz: consideration stipulated by the treaty........	$5,000,000 00
Additional amount granted by supplement........	600,000 00

Additional amount granted by act of June 12th, 1838	$1,047,067 00
Expenditures out of $100,000 appropriated by same act for provisions and clothing for poorer classes of Cherokees, medical attendance, medicines, and other objects for facilitating removal of Cherokees..	60,128 08
Expense of negotiating treaty of 1835–'36, and supplement, and of delegation of Cherokees to Washington, who signed the latter.............	37,080 97
Extinguishment of title to Osage reservations in country west...................................	15,000 00
Improvements on Union and Harmony missionary reservations..	$25,000 00
Extra compensation to General Scott for his services in connexion with Cherokee removal...........	1,952 00
Compensation of the several boards of commissioners, clerks, and interpreters, and contingent expenses of same....................................	56,709 02
Cost of surveying and fixing boundaries of country west	6,699 24
Expenditures for various extraneous objects paid out of Cherokee funds, but not properly chargeable thereto, (and not so charged in preceding settlement,) and which will therefore have to be refunded by the United States......................	43,219 00
Amount allowed Clements, Bryan & Co., under special act of Congress for their relief, for damages on account of their contract for subsisting emigrating Cherokees, having been superseded by the arrangement made by General Scott with John Ross, and others..................................	31,302 10
Amount allowed by Treasury Department to Williamson Smith as damages, under contract for removal of Cherokees, which was superseded in the same way..	51,700 42
Amount allowed by special act of Congress to Langtry & Jenkins, for damages arising out of supersedure, in same way, of their contract for furnishing emigrant Cherokees with shoes.......	1,443,65 00
Amount of special allowances already paid, made by treaty of 1846, to "government party" and "treaty party" of Cherokees	142,000 00
Amount awarded to old settlers..................	419,763 96
	$7,539,065 44

This, certainly, is a far greater sum than it was ever contemplated when the treaty of 1835–'6 was made, the United States would have to pay, on account of that measure; the $5,000,000 fixed by the Senate as the value of the country and possessions of the Cherokees east, being intended to embrace the whole expense, except a moderate amount for the objects which it was stipulated in the treaty the government was to pay for in addition. According to that understanding the amount should have been under six millions of dollars, while, if the large expenditures on account of the military force which had to be sent into the Cherokee country were included, with the allowances herein made, under the treaty of 1846, the whole cost would not, probably, be far, if any thing, short of ten millions of dollars.

I now proceed to state the result, under the treaty of 1846, with reference to the amounts which it will be necessary that Congress appropriate in order to fulfil the stipulations of that treaty, according to the construction herein adopted.

The aggregate balance in the treasury of all the funds under the treaty of 1835–'6, the supplement and the appropriation of June 12, 1838, applicable to objects to be embraced in the settlement with the Cherokees, is	$58,670 48
On which there are outstanding demands for claims of various kinds, allowed by the commissioners under the 17th article of the treaty of 1835–'6, and for commutation of removal and subsistence, which have been suspended for further evidence	19,721 98
Balance applicable	$38,948 50

This amount deducted from the balance shown by the settlement under the treaty of 1835–'6, makes a discrepancy between what remains in the treasury, and what should be there according to that settlement, of $145,122 78.

This discrepancy arises from the deduction of the amounts for certain objects improperly charged to the funds under the treaty, and which, as stated, the United States have to make good, from the defalcation of two persons, at the time officers of the army, acting as disbursing agents of the Indian department, amounting to $76,976 54, and from moneys in the hands of a former agent for the Cherokees, whose accounts have not yet been finally settled. Whatever amount may be found due the United States on such settlement, will, no doubt, be forthcoming soon thereafter, but it is deemed best to estimate for the whole amount required to carry the treaty of 1846 fully into effect, without reference to any such contingency, as, whatever amount may then be returned to the treasury will not be used, but go directly to the surplus fund. The sums required to be appropriated will, therefore, be as follows, viz:

Amount found due the "old settlers" or "western Cherokees" according to the allowance made to them by the treaty of 1846	$419,763 96

Amount found due the Cherokees residing east at the date of the treaty of 1835–'6	$184,071 28
	603,835 24
Deduct amount on hand applicable	38,948 50
Balance required to be appropriated	564,886 74

Although I think it has been clearly shown that the assumption, in the treaty of 1846, that certain expenditures under the treaty of 1835–'6 had, improperly, been charged to the "five million fund," and that the United States were therefore bound to make good the amount thereof, was an error; and, though this office is entirely satisfied that full and ample justice is done in the principles and results of the settlement herein made, I yet deem it proper to state the amounts of those expenditures under their several heads. They are as follows, viz:

1st. Amount for reservations, except that class which, like spoliations, are specifically and in terms provided for in the 3d article of the supplement	$125,477 51
2d. "Rents," viz., amounts allowed for dispossession of improvements prior to treaty	164,549 02
3d. Amounts allowed for same during two years they were permitted by the treaty to remain	47,596 10
4th. Amount paid for valuing agents, enrolling and removing agents, commissaries, and interpreters, &c., and for services of Cherokee committee....	163,296 38
Total..	500,919 01

For the details of this last item, see the accompanying statement furnished by the Second Auditor of the Treasury, which gives the various classes of officers and agents employed, and the amount expended for each.

The foregoing is respectfully submitted for your information, and in order that application may be made to Congress for the requisite appropriations.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. Wm. L. Marcy,
Secretary of War.

STATEMENT

BY THE

SECOND AUDITOR OF THE TREASURY,

OF

Amounts paid to various classes of officers and agents employed in the execution of the Cherokee treaty of 1835–'36.

Statement showing the amount of the payments made and charged to the appropriations of July 2, 1836, *and June* 12, 1838, *for carring into effect the treaty of New Echota of December*, 1835, *and its supplement, for the objects herein specified, as requested by the Commissioner of Indian Affairs, per letter addressed to the Second Auditor of the Treasury, under date of October* 12, 1836.

Names of disbursing agents, &c.	Number of settlement.	Date of settlement.	When disbursed.	For employment of—				
				Superintendents.	Clerks.	Valuing agents.	Conductors of emigration.	Disbursing agents.
Benjamin F. Curry, superintendent......	20,452	July 16, 1836	3d quarter, 1836..........	....	....	....	....	....
Do do do	20,685	Oct. 5, 1836	4th do	$365 00	....	....	....	....
Do do do	493	May 30, 1837	3d do	....	....	....	....	....
J. F. Schermerhorn, commissioner......	20,458	July 14, 1836	3d do	....	....	....	....	....
Philip Minis, military disbursing agent..	811	Aug. 25, 1837	4th quarter, 1836, and 1st, 2d, and 3d quarters, 1837.	1,477 36	$1,355 00	$9,063 93	....	....
Jno. C. Reynolds, military dis. agent....	893	Sept. 26, 1837	From March 3 to July 10, 1837..................	331 00	....	60 00	$1,260 56	....
Do do do	3,229	June 19, 1839	From July 1, 1837, to Mar. 31, 1838...............	838 35	....	204 00	1,313 08	....
Joel Cruttenden, agent...............	2,025	Aug. 20, 1838	4th quarter, 1837..........	500 00	....	296 00	....	$547 07
Do do	2,589	Jan. 24, 1839	1st and 2d quarters, 1838..	1,000 00	1,356 00	972 00	857 68	926 00
Do do	3,136	May 28, 1839	3d and 4th quarters, 1838, and 1st quarter, 1839....	1,142 35	2,748 00	3,592 00	....	1,430 50
J. P. Simonton, military disburs'g agent.	1,042	Nov. 16, 1837	2d quarter, 1837..........	....	....	477 45	....	....
Do do do	1,431	Mar. 9, 1838	3d do	....	100 00	36 00	....	....

Do do do	1,560	April 18, 1838	4th do			524 00		
Do do do	2,161	Aug. 27, 1838	1st quarter, 1838	635 90	1,410 00	32 00		
Do do do	2,180	Nov. 2, 1838	2d do		816 00			
Do do do	3,614	Aug. 23, 1839	3d and 4th quarters, 1838		2,231 37			
Joseph Hook, special agent	922	Oct. 7, 1837	3d quarter, 1837					
Edward Deas, military disbursing agent	3,594	Sept. 19, 1839	2d, 3d, and 4th quarters, 1838, and 1st quar., 1839		3 00		2,725 42	
F. R. H. K. Whiteley, disbursing agent	3,486	Aug. 15, 1839	3d quarter, 1838				944 77	
G. S. Drane, military disbursing agent	3,638	Oct. 3, 1839	2d, 3d, and 4th quarters, 1838				1,571 42	
J. Van Horne, do do	1,474	Mar. 21, 1838	2d and 3d quarters, 1837		10 00			
Do do do	3,918	Dec. 7, 1839	4th quarter, 1837, and 1st and 2d quarters, 1838		187 41			
V. P. Van Antwerp, disbursing agent	1,611	May 1, 1838	4th quarter, 1837, and 1st quarter, 1838					1,320 00
R. D. C. Collins, military dis. agent	3,689	Sept. 12, 1839	3d quarter, 1838				78 00	
J. R. Stephenson, do do	5,874	May 28, 1841	1838 and 1839		64 90			
Benjamin King	3,311	July 10, 1839	4th quarter, 1838					
Henry Bateman	4,200	Feb. 26, 1840	2d do				162 20	
James Deadrick	462							
W. H. Underwood	20,424	July 12, 1836				472 00		
Johnson K. Rogers	6,520	Dec. 16, 1841			368 00			
Lewis G. De Russey	1,609	Jan. 9, 1845	4th quarter, 1837					
Do	1,804	Mar. 1, 1845						
Henry Smith	210	Sept. 22, 1843						
Wm. Armstrong	7,434	Oct. 21, 1842	2d quarter, 1841					
Capt. John Page, military dis. agent	2,876	Mar. 25, 1839	2d, 3d, and 4th quarters, 1838	1,508 00	249 00		1,591 75	1,278 75
John Ross	6,289	Sept. 17, 1841	1838 and 1839				15,320 00	
				7,797 96	10,898 68	15,729 38	25,824 88	5,502 32

STATEMENT—Continued.

Names of disbursing agents, &c.	Number of settlement.	Date of settlement.	When disbursed.	For employment of— Physicians.	Interpreters.	Issuing agents.	Enrolling agents.	Collecting agents.
Benjamin F. Curry, superintendent	20,452	July 16, 1836	3d quarter, 1836					
Do do do	20,685	Oct. 5, 1836	4th do					
Do do do	493	May 30, 1837	3d do					
J. F. Schermerhorn, commissioner	20,458	July 14, 1836	3d do					
Philip Minis, military disbursing agent	811	Aug. 25, 1837	4th quarter, 1836, and 1st, 2d, and 3d quarters, 1837	$646 00	$2,738 03			
Jno. C. Reyuolds, military dis. agent	893	Sept. 26, 1837	From March 3, to July 10, 1837	915 00	872 00	$428 00		$97 80
Do do do	3,229	June 19, 1839	From July 1, 1837, to Mar. 31, 1838	2,562 29	1,968 00	253 50		515 00
Joel Cruttenden, agent	2,025	Aug. 20, 1838	4th quarter, 1837	1,772 00	1,665 00	320 00	$1,801 00	1,323 00
Do do	2,589	Jan. 24, 1839	1st and 2d quarters, 1838	2,198 00	2,191 50	201 50	2,524 00	2,672 00
Do do	3,136	May 28, 1839	3d and 4th quarters, 1838, and 1st quarter, 1839	1,436 00	3,039 50	2,189 50	3,689 00	1,502 00
J. P. Simonton, military disburs'g agent	1,042	Nov. 16, 1837	2d quarter, 1837	309 00	270 00	72 50		50 00
Do do do	1,431	Mar. 9, 1838	3d do		232 50			
Do do do	1,560	April 18, 1838	4th do		322 50			
Do do do	2,161	Aug. 27, 1838	1st quarter, 1838		315 00			
Do do do	2,180	Nov. 2, 1838	2d do		334 50			

Do do do	3,614	Aug. 23, 1839	3d and 4th quarters, 1838	....	330 00	....	....	....
Joseph Hook, special agent	922	Oct. 7, 1837	3d quarter, 1837	....	....	....	....	....
Edward Deas, military disbursing agent	3,594	Sept. 19, 1839	2d, 3d, and 4th quarters, 1838, and 1st quar., 1839	3,138 55	1,634 50	....	340 00	335 63
F. R. H. K. Whiteley, disbursing agent	3,486	Aug. 15, 1839	3d quarter, 1838	630 00	931 89	....	....	....
G. S. Drane, military disbursing agent	3,638	Oct. 3, 1839	2d, 3d, and 4th quarters, 1838	1,095 76	1,032 00	....	....	....
J. Van Horne, do do	1,474	Mar. 21, 1838	2d and 3d quarters, 1837	....	4 00	....	....	....
Do do do	3,918	Dec. 7, 1839	4th quarter, 1837, and 1st and 2d quarters, 1838	....	....	....	....	....
V. P. Van Antwerp, disbursing agent	1,611	May 1, 1838	4th quarter, 1837, and 1st quarter, 1838	....	....	....	....	....
R. D. C. Collins, military dis. agent	3,689	Sept. 12, 1839	3d quarter, 1838	....	....	....	....	....
J. R. Stephenson do do	5,874	May 28, 1841	1838 and 1839	....	975 50	6,155 16	....	....
Benjamin King	3,311	July 10, 1839	4th quarter, 1838	....	....	....	....	....
Henry Bateman	4,200	Feb. 26, 1840	2d do	....	....	....	....	....
James Deadrick	462	....	....	....	....	....	....	....
W. H. Underwood	20,424	July 12, 1836	....	....	....	....	456 00	....
Johnson K. Rogers	6,520	Dec. 16, 1841	....	....	....	....	....	....
Lewis G. De Russey	1,609	Jan. 9, 1845	4th quarter, 1837	....	....	....	....	....
Do	1,804	Mar. 1, 1845	....	....	....	....	....	....
Henry Smith	210	Sept. 22, 1843	....	....	....	....	....	....
Wm. Armstrong	7,434	Oct. 21, 1842	2d quarter, 1841	....	117 50	655 50	....	....
Capt. John Page, military dis. agent	2,876	Mar. 25, 1839	2d, 3d, and 4th quarters, 1838	9,867 87	4,560 50	1,271 51	1,464 00	707 50
John Ross	6,289	Sept. 17, 1841	1838 and 1839	11,065 00	4,811 50	....	....	....
				35,635 47	28,345 83	11,547 17	10,274 00	7,232 93

STATEMENT—Continued.

Names of disbursing agents, &c.	Number of settlement.	Date of settlement.	When disbursed.	The services of the Cherokees who acted as members of the committee, provided for in the third clause of the 12th article of the treaty.	Transportation, or other expenses of military officers employed in connexion with the execution of said treaty.	The cost of the transportation of any funds for disbursement, under the treaty.	Expenses attending the negotiation of the treaty.	Medical supplies.
Benjamin F. Curry, superintendent......	20,452	July 16, 1836	3d quarter, 1836.........	....	....	....	$31,671 87	....
Do do do	20,685	Oct. 5, 1836	4th do	....	....	....	....	....
Do do do	493	May 30, 1837	3d do	....	....	....	818 00	....
J. F. Schermerhorn, commissioner........	20,458	July 14, 1836	3d do	....	....	....	4,041 60	....
Philip Minis, military disbursing agent...	811	Aug. 25, 1837	4th quarter, 1836, and 1st, 2d, and 3d quarters, 1837.	$5,164 50	$2,117 00	$225 50	....	$93 03
Jno. C. Reynolds, military dis. agent.....	893	Sept. 26, 1837	From March 3 to July 10, 1837..................	....	....	....	....	....
Do do do	3,229	June 19, 1839	From July 1, 1837, to Mar. 31, 1838.................	....	1,073 60	7 00	....	84 54
Joel Cruttenden, agent..................	2,025	Aug. 20, 1838	4th quarter, 1837..........	....	....	....	....	....
Do do	2,589	Jan. 24, 1839	1st and 2d quarters, 1838...	....	....	....	....	566 11
Do do	3,136	May 28, 1839	3d and 4th quarters, 1838, and 1st quarter, 1839....	129 00	....	....	....	318 06
J. P. Simonton, military disburs'g agent..	1,042	Nov. 16, 1837	2d quarter, 1837..........	....	....	....	....	134 80
Do do do	1,431	Mar. 9, 1838	3d do	....	....	6 00	....	....
Do do do	1,560	April 18, 1838	4th do	1,080 00	....	....	....	....
Do do do	2,161	Aug. 27, 1838	1st quarter, 1838..........	3,147 00	578 00	494 75	....	....
Do do do	2,180	Nov. 2, 1838	2d do	3,104 00	....	14 00	....	....

Do do do	3,614	Aug. 23, 1839	3d and 4th quarters, 1838	6,540 00		1,715 25		
Joseph Hook, special agent	922	Oct. 7, 1837	3d quarter, 1837			2,694 70		
Edward Deas, military disbursing agent	3,594	Sept. 19, 1839	2d, 3d, and 4th quarters, 1838, and 1st quar., 1839		892 00			123 24
F. R. H. K. Whiteley, disbursing agent	3,486	Aug. 15, 1839	3d quarter, 1838					
G. S. Drane, military disbursing agent	3,638	Oct. 3, 1839	2d, 3d, and 4th quarters, 1838		1,232 90			42 99
J. Van Horne, do do	1,474	Mar. 21, 1838	2d and 3d quarters, 1837		57 75			
Do do do	3,918	Dec. 7, 1839	4th quarter, 1837, and 1st and 2d quarters, 1838		375 31	58 56		
V. P. Van Antwerp, disbursing agent	1,611	May 1, 1838	4th quarter, 1837, and 1st quarter, 1838			667 30		
R. D. C. Collins, military dis. agent	3,689	Sept. 12, 1839	3d quarter, 1838					
J. R. Stephenson, do do	5,874	May 28, 1841	1838 and 1839			15 00		
Benjamin King	3,311	July 10, 1839	4th quarter, 1838					4,124 78
Henry Bateman	4,200	Feb. 26, 1840	2d do					
James Deadrick	462							
W. H. Underwood	20,424	July 12, 1836						
Johnson K. Rogers	6,520	Dec. 16, 1841						
Lewis G. De Russey	1,609	Jan. 9, 1845	4th quarter, 1837			717 00		
Do	1,804	Mar. 1, 1845			415 00			
Henry Smith	210	Sept. 22, 1843		132 00				
Wm. Armstrong	7,434	Oct. 21, 1842	2d quarter, 1841					
Capt. John Page, military dis. agent	2,876	Mar. 25, 1839	2d, 3d, and 4th quarters, 1838		320 75			
John Ross	6,289	Sept. 17, 1841	1838 and 1839					
				19,296 50	7,062 31	6,615 06	36,531 47	5,487 55

STATEMENT—Continued.

Names of disbursing agents, &c.	Number of settlement.	Date of settlement.	When disbursed.	Stationery.	Printing.	Appropriations.		Aggregate.
						July 2, 1836.	June 12, 1838.	
Benjamin F. Curry, superintendent	20,452	July 16, 1836	3d quarter, 1836			$31,671 87		$32,954 37
Do do do	20,685	Oct. 5, 1836	4th do			365 00		
Do do do	493	May 30, 1837	3d do	$99 50		917 50		
J. F. Schermerhorn, commissioner	20,458	July 14, 1836	3d do			4,041 60		4,041 60
Philip Minis, military disbursing agent	811	Aug. 25, 1837	4th quarter, 1836, and 1st, 2d, and 3d quarters, 1837	13 75		22,894 10		22,894 10
Jno. C. Reynolds, military dis. agent	893	Sept. 26, 1837	From March 3 to July 10, 1837	5 69	$12 50	3,982 55		12,838 41
Do do do	3,229	June 19, 1839	From July 1, 1837, to Mar. 31, 1838	6 50		8,855 86		
Joel Cruttenden, agent	2,025	Aug. 20, 1838	4th quarter, 1837	4 62		8,228 69		45,755 45
Do do	2,589	Jan. 24, 1839	1st and 2d quarters, 1838	138 02		15,602 81		
Do do	3,136	May 28, 1839	3d and 4th quarters, 1838, and 1st quarter, 1839	638 04	70 00	21,923 95		
J. P. Simonton, military disburs'g agent	1,042	Nov. 16, 1837	2d quarter, 1837	5 25	70 75	1,389 75		25,619 26
Do do do	1,431	Mar. 9, 1838	3d do			374 50		
Do do do	1,560	April 18, 1838	4th do			1,926 50		
Do do do	2,161	Aug. 27, 1838	1st quarter, 1838	10 99	47 00	6,670 64		
Do do do	2,180	Nov. 2, 1838	2d do		75 50	4,344 00		
Do do do	3,614	Aug. 23, 1839	3d and 4th quarters, 1838	28 25	69 00	10,913 87		

Joseph Hook, special agent	922	Oct. 7, 1837	3d quarter, 1837			2,694 70		2,694 70
Edward Deas, military disbursing agent	3,594	Sept. 19, 1839	2d, 3d, and 4th quarters, 1838, and 1st quar., 1839	30 45		9,222 79		9,222 79
F. R. H. K Whiteley, disbursing agent	3,486	Aug. 15, 1839	3d quarter, 1838			2,506 57		2,506 57
G. S. Drane, military disbursing agent	3,638	Oct. 3, 1839	2d, 3d, and 4th quarters, 1838	17 75	18 00	5,010 82		5,010 82
J. Van Horne, do do	1,474	Mar. 21, 1838	2d and 3d quarters, 1837	10 62	25 00	107 37		728 65
Do do do	3,918	Dec. 7, 1839	4th quarter, 1837, and 1st and 2d quarters, 1838			621 28		
V. P. Van Antwerp, disbursing agent	1,611	May 1, 1838	4th quarter, 1837, and 1st quarter, 1838			1,987 30		1,987 30
R. D. C. Collins, military dis. agent	3,689	Sept. 12, 1839	3d quarter, 1838		39 00	117 00		117 00
J. R. Stephenson, do do	5,874	May 28, 1841	1838 and 1839	52 92	56 87	7,320 35		7,320 35
Benjamin King	3,311	July 10, 1839	4th quarter, 1838			4,124 78		4,124 78
Henry Bateman	4,200	Feb. 26, 1840	2d do			162 20		162 20
James Deadrick	462					456 00		456 00
W. H. Underwood	20,424	July 12, 1836				472 00		472 00
Johnson K. Rogers	6,520	Dec. 16, 1841				368 00		368 00
Lewis G. De Russey	1,609	Jan. 9, 1845	4th quarter, 1837			717 00		1,132 00
Do	1,804	Mar 1, 1845				415 00		
Henry Smith	210	Sept. 22, 1843				132 00		132 00
Wm. Armstrong	7,434	Oct. 21, 1842	2d quarter, 1841			773 00		773 00
Capt. John Page, military dis. agent	2,876	Mar. 25, 1839	2d, 3d, and 4th quarters, 1838	140 15	49 00		$23,008 78	23,008 78
John Ross	6,289	Sept. 17, 1841	1838 and 1839				31,196 50	31,196 50
				1,202 50	532 62			235,516 63
Aggregate charged to each appropriation respectively						181,511 35	54,205 28	235,516 63

Treasury Department, *Second Auditor's Office, January* 30, 1847.

JNO. M. McCALLA, *Second Auditor.*

Statement showing the amount of certain expenditures made and charged to the appropriations of July 2, 1836, *and June* 12, 1838, *for carrying into effect the treaty of New Echota of December,* 1835, *as requested per letter from the Commissioner of Indian Affairs to the Second Auditor, dated October* 12, 1846.

EXPENDITURES.

Superintendents	$7,797 96
Clerks	10,898 68
Valuing agents	15,729 38
Conductors of emigration	25,824 88
Disbursing agents	5,502 32
Physicians	35,635 47
Interpreters	28,345 83
Issuing agents	11,547 17
Enrolling agents	10,274 00
Collecting agents	7,232 93
Cherokee committee, third clause, 12th article treaty	19,296 50
Transportation, &c., military officers	7,062 31
Cost transportation of funds, &c	6,615 06
Expenses attending negotiation of the treaty	36,531 47
Medical supplies	5,487 55
Stationery	1,202 50
Printing	532 62
Aggregate amount	$235,516 63

Treasury Department,
Second Auditor's Office, January 30, 1847.

to do injury otherwise. And I am now fully satisfied *that no other terms* will, at an early period, give quiet to the Cherokee people; and to effect this object, that each party must be fairly represented in a new government, agreeably to their numbers, and the *decrees* of Mr. Ross's convention in relation to the treaty party annulled. I am decidedly of opinion that, unless the Ross party, at the contemplated meeting on the 15th of next month, should make such overtures to the old settlers as are just, quiet cannot be had in the Cherokee nation, and, at least, many murders may be expected; and, in the event of the failure of the present plan to restore peace in the Cherokee nation, I cannot conjecture how that object is to be insured, except by the Government of the United States compelling them to unite on terms of equity; and this will, very probably, have to be resorted to. The Ross party majority is not so great as to render it probable that the opposite party will comply with their will and pleasure, without being represented by an individual of their own choice.

The treaty party and old settlers, as you can readily imagine, are much opposed to John Ross having any authority in the Cherokee nation; and the United States are still more interested in dispensing with his authority.

If the difficulties in the Cherokee nation are not settled at an early period, the United States must, and ought to, dictate the terms; and, if the necessary authority is given to me, this difficulty will soon end, if not settled by the Cherokees themselves. I judge that it will only be necessary for them to know that I am authorized to call a force from Arkansas and Missouri to settle this dispute, without the necessity of that force being called into actual service.

I have consulted the United States attorney for the district of Arkansas, who is decidedly of opinion that the murderers of the Ridges and Boudinot cannot be tried in the courts of the United States. Major Ridge having been killed within the State of Arkansas, the murderers of him can be tried by the laws of that State. I have not as yet been able to capture any of the individuals implicated, and have directed the search for them to be discontinued during the late council; and this search will probably be discontinued until after the breaking up of the contemplated meeting on the 15th of January, not wishing to throw any impediment in their way to prevent a general attendance.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brigadier General U. S. army.

Hon. J. R. Poinsett,
Secretary of War, Washington City.

Headquarters, 2d Dept. W. Division,
Fort Gibson, December 24, 1839.

Sir: I this evening received from Governor Stokes, your agent, the proceedings of your last council; among which there is no reference made to the subject for which the council was called, viz: the communication from the War Department under date of the 12th October, an answer to which is required by the Secretary, and was requested by me. I have now to repeat my solicitation, and urge that an answer be given in relation to that document. Your reply is requested by return of express.

I am, sir, respectfully, your obedient servant,

M. ARBUCKLE,
Brevet Brig. Gen. U. S. Army.

To JOSEPH VANN,
Assistant Chief of the late Emigrants.

P. S.—An officer from Washington is now awaiting your answer at this post.
M. A.

True copy:

S. G. SIMMONS, *A. D. C.*,
and A. A. Adj. Gen., 2d Dept. W. Division.

CHEROKEE NATION,
Near Neosho river, December 24, 1839.

SIR: I this evening received by express your letter of the 24th December. You state that you had seen Governor Stokes, our agent, and the proceedings of our last council, and among which there is no reference made to the subject for which the council was called, viz: the communication from the War Department, under date of the 12th of October, an answer to which is required by the Secretary of War.

The extract of letters which I received, of the Secretary of War, (one under date 12th October, and the other 9th November,) and your two letters to me, I submitted to the national committee and council, when assembled: they were then read and interpreted, and taken into consideration. An answer was about to be prepared, when I received a letter from you, by express, at the council, requesting that the council should go into some arrangement to settle the difficulties that exist in our country; and also Gov. Stokes said, in his address to the council, that he wished the Cherokee people to meet this winter, or early next spring, for the purpose of settling their difficulty. The national council has taken your request and that of Gov. Stokes into consideration, and then appointed a committee to confer with Governor Stokes as to the time and place when the Cherokee people should meet for the purpose of settling their difficulty; the time and place which was appointed I expect you have seen.

It appears to be the view of the Secretary of War, in the extract of his letter under date of 12th October, that the Cherokee people should be called together, and a majority, fairly obtained, should govern. The time is appointed for the Cherokee people to meet on the 15th of next month; then I will call on the national committee and council to answer the Secretary of War's communication; that is as soon as it will be convenient.

I am, sir, respectfully, your obedient servant,

J. VANN, *Assistant Chief.*

To M. ARBUCKLE,
Brevet Brig. Gen. U. S. Army.

True copy:

S. G. SIMMONS, *A. D. C.*,
and A. A. Adj. Gen., 2d Dept. W. Division.

TAHLEQUAH, CHEROKEE NATION,
December 20, 1839.

The following understanding and agreement is entered into between Montfort Stokes, United States agent for the Cherokee nation, and Joseph Vann, David Vann, Richard Taylor, Charles Coodey, and W. S. Coodey, a committee specially appointed thereto by the national council:

It is mutually agreed that a friendly and general invitation shall be given to all the Cherokee people to assemble at Tahlequah on the 15th day of January, 1840, in order that the will of a majority of the Cherokees may then and there be fairly and properly ascertained in relation to the government of the nation; the object being to establish peace and to restore quiet among all the people, and to satisfy the Government of the United States which is the government of their choice.

The Cherokees promise, on their part, that no person of the treaty party, or of any other party or politics, shall be molested in attending said meeting, either in coming, while remaining, or returning to their homes; and will use every exertion to maintain strict order and propriety, that the proposed meeting shall be of a friendly character, and all business transacted in harmony and good feeling.

Written notices shall be sent throughout the country, signed by the undersigned, requesting prompt and general attendance of all parties at the time designated; and the declared will of the majority at the meeting shall be reported to the Government of the United States as the decision of the Cherokees in relation to their future government.

M. STOKES,
Agent for the Cherokee Nation.
JOSEPH VANN,
Assistant Principal Chief.
DAVID VANN,
RICHARD TAYLOR,
CHARLES COODEY,
W. SHOREY COODEY.

True copy:

S. G. SIMMONS, *A. D. C.*,
and A. A. Adjt. Gen. 2d Dept. W. Division.

TO THE CHEROKEE PEOPLE.

You are hereby invited and requested to assemble at Tahlequah, near the Illinois river, on the 15th day of January next, then and there to decide by vote which shall be the government of the Cherokee nation, in order that peace and friendship may be restored throughout the country, and the Government of the United States satisfied as to the will and choice of the Cherokees in relation to this matter.

The undersigned have entered into an agreement that this meeting shall be conducted with strict order, and that no person of the treaty party, or of any other party or politics, shall be molested or ill-treated, either in coming to, while remaining at, or returning from, the council to their homes, and all business transacted in good feeling and harmony.

All the people of all parties whatever are invited, and desired to be in prompt attendance, to declare their will, by their vote, that future strife may subside, and the same reported to the President of the United States.

M. STOKES,
Agent for Cherokee Nation.
JOSEPH VANN,
Assistant Principal Chief.
DAVID VANN,
RICHARD TAYLOR,
CHARLES COODEY,
W. SHOREY COODEY.

TAHLEQUAH, CHEROKEE NATION, *December* 20, 1839.

True copy: S. G. SIMMONS, *A. D. C.*
and A. A. Adjt. Gen. 2d Dept. W. Division.

HEADQUARTERS, 2D DEPT. W. DIVISION,
Fort Gibson, December 19, 1839.

GENTLEMEN: I received by the mail last evening a copy of a communication from the Commissioner of Indian Affairs to Captain Armstrong, a copy of which is herewith transmitted for your information.

It is with your council at once to settle all difficulties in the Cherokee nation, which, as I judge, cannot be effected except on terms of perfect justice to both parties. I, therefore, entreat you to act promptly in this highly important matter, that the Cherokee people may be restored to quiet and good feeling towards each other.

Captain Armstrong has informed me that he is appointed to act on the claims of the Cherokees against the Osages, and that he will attend to that duty soon after his return from Red river, where he is at present.

I am, gentlemen, very respectfully, your obedient servant,

M. ARBUCKLE,
Brevet Brig. General U. S. A.

JOSEPH VANN,
Ass't Chief of the late Emigrants, and others,
in council near Illinois river.

True copy: S. G. SIMMONS, *A. D. C.*
and A. A. Adjt. Gen., 2d Dept. W. Division.

HEADQUARTERS, 2D DEPT. W. DIVISION,
Fort Gibson, December 27, 1839.

SIR: I have this moment received the original (of which the accompanying is a copy) from the chiefs of the old settlers, which is transmitted for your information; and, although I do not doubt that the present intentions of the late emigrants are opposed to a union with the old settlers on the terms proposed, yet I am not without a hope that the proposition will be accepted, and that peace will thereby be restored to the Cherokee nation.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brigadier General U. S. A.

Hon. J. R. POINSETT,
Secretary of War, Washington City.

Fort Gibson, *December* 27, 1839.

Gentlemen: Having seen notifications purporting to be in accordance with an agreement entered into between our agent, Governor Stokes, and Joseph Vann and others, of the Ross party, we would, therefore, beg leave most respectfully to call your attention to this matter; and while we are constrained to protest against the illegal acts of Joseph Vann and others, we would not have our agent (Governor Stokes) to think that we are in the least disposed to censure him for his noble efforts to bring about a reconciliation, and thereby restore peace and harmony to the Cherokee people; for, above all others, this should be the desirable object, and one that our acts plainly demonstrate has been sought after by us. But we do not believe that the meeting called by Joseph Vann and others (if we understand the design of it) can effect any thing good for our people.

In the first place, the legal authorities of the Cherokee nation west have not been consulted, nor have they had any agency in convening the people to decide by vote which government shall prevail.

Secondly. We do not predicate the legitimacy of our government barely upon numbers; for long has the United States Government acknowledged our government, and treated us as a nation. And how often has Mr. Ross, while wielding the government of the Eastern Cherokees, done the same, and contended that we were distinct communities?

How strange does it appear, now, for Mr. Ross and his partisans to attempt by threats and violence to abrogate our laws, and place a government over our heads without our consent.

We appeal to you again, and to the Government of the United States, to see that justice is done. It is plainly to be seen what would be the consequence if the Ross party should succeed in their present plan to get the United States to acknowledge the legitimacy of their government, under existing circumstances. A goodly number of our respectable citizens would be under proscription; while a large portion of our people would be stripped of their rights and unrepresented in the government, while crimes of the deepest dye would go unpunished. To such a state of things as this we never can consent; but we ever have been, and are yet, willing to come to a friendly understanding, in which the rights of all shall be respected, and equal justice done to all; but we do most earnestly protest against any assumed right or illegal steps of individuals to the contrary. Nevertheless, you are at liberty to notify the opposite party that we are willing to meet them here, (at Fort Gibson,) by each party choosing twelve men, and meet here at any time they may appoint, for the purpose of making such arrangements for the future government of the Cherokee nation as may be calculated to restore peace to the Cherokee people; and we agree to abide the decision of said committees.

We are, gentlemen, with high respect, your friends,

JOHN ROGERS, *P. C.*
JOHN SMITH,
DUTCH,
Chiefs of the Cherokee Nation.

Thomas Wilson, *Secretary C. C. N.*

To Gen. M. Arbuckle, and Gov. M. Stokes,
Agent for Cherokees.

True copy: S. G. SIMMONS, *A. D. C.*,
and A. A. Adjt. Gen. 2d Dept. W. Division.

No. 14.

Fuller's Hotel, *December* 31, 1839.

The compliments of the undersigned, representatives of the Cherokee people, to the Hon. Joel R. Poinsett, Secretary of War, and beg leave to report their arrival in the city on business of the Cherokee nation with the United States Government.

The delegation would be happy to pay their personal respects to the honorable Secretary of War and the President of the United States at such time as they may be pleased to designate.

We have the honor to be, sir, very respectfully, your obedient, humble servants,

JOHN ROSS,
JOSEPH M. LYNCH,
LOONEY PRICE,
ELIJAH HICKS,
EDWARD GUNTER,
GEORGE HICKS,
his
ARCHIBALD x CAMPBELL,
mark.
his
JOHN x LOONEY,
mark.

War Department, *January* 2, 1840.

The Secretary of War is instructed by the President to say, in reply to the Cherokees claiming to be representatives of that people, and expressing their desire to pay their personal respects to the President and the Secretary of War, that, until a full investigation has been had of all the circumstances attending the foul and cruel murders lately perpetrated in the Cherokee country upon the innocent and unoffending chiefs the Ridges and Boudinot, the Government will hold no communication with John Ross.

The Secretary of War will receive the other members of the delegation to-morrow at one o'clock.

To Joseph M. Lynch,
Looney Price,
Elijah Hicks,
Edward Gunter,
George Hicks,
Archibald Campbell,
John Looney,
Fuller's Hotel.

Washington City, *January* 3, 1840.

Sir: The undersigned, a portion of the delegation from the Cherokee nation, have the honor to acknowledge the receipt of your communication of yesterday. They regret to learn that the Government has determined "to hold no communication with John Ross," the principal chief of the nation, "until a full investigation has been had of all the circumstances attending the foul and cruel murders lately perpetrated in the Cherokee country upon the innocent and unoffending chiefs the Ridges and Boudinot."

If an investigation had been made, and the guilt of Mr. Ross had been established, or even if pregnant circumstances of suspicion had been exhibited upon a full and impartial examination of the case, the undersigned would have felt no surprise at the views indicated in your communication.

When such investigation shall be instituted, Mr. Ross will be prepared to meet it. None such, however, has yet been made; and ignorant as we are of any circumstances that can fix upon Mr. Ross any participation in the acts of which he is thus at least impliedly accused, it appears to us that, independently of other reasons for our course, it might appear that we lent our sanction to the charge, if we were, under existing circumstances, to accept the invitation you have been pleased to offer, of waiting upon you to-day, to the exclusion of Mr. Ross, one of the constituent members of the delegation.

Having averred our ignorance of the grounds upon which Mr. Ross has been thus gravely and publicly accused, we hope we shall not be considered as going beyond the strict line of our duty if we request that you will furnish to us the names of Mr. Ross's accusers, and the evidence which has been exhibited to the department implicating him in the acts to which you have alluded.

We have the honor to be, sir, your obedient, humble servants,

JOSEPH M. LYNCH,
ELIJAH HICKS,
EDWARD GUNTER,
LOONEY PRICE,
his
ARCH. x CAMPBELL,
mark.
In behalf of others.

Hon. Joel R. Poinsett,
Secretary of War.

Washington City, *January* 3, 1840.

Sir: The undersigned has seen with pain and astonishment the reference to him, by name, as connected with recent occurrences in the Cherokee country, in your recent official report. With similar feelings he has perceived that he is by strong implication accused by you, in your communication to those associated with him as delegates from the Cherokee nation to this Government, of having participated in the murders of the Ridges and Boudinot. The grounds upon which so serious an accusation has been thus preferred by so high an authority as yourself, are unknown to the undersigned; but he cannot but presume them to be strong in themselves, and emanating from a credible source, before they would have been deemed sufficient to justify so weighty a charge, and such confidence in its truth, as to lead to an ignominious exclusion from participating in the important public business intrusted to him in conjunction with others. These circumstances impose upon me a duty, and I conceive confer upon me a right, to call for the names of my accusers, and the evidence upon which my name has been thus associated with acts of which I was at the time entirely ignorant, and of the guilt connected with which I am absolutely innocent.

I have the honor to be, sir, very respectfully, your obedient, humble servant,

JOHN ROSS.

Hon. Joel R. Poinsett,
Secretary of War.

War Department, *January* 4, 1840.

The undersigned has received the note of the Cherokee delegation, declining the invitation tendered to them, and asking to be furnished with the names of John Ross's accusers, and the evidence which has been exhibited to the department implicating him in the acts to which allusion was made—meaning, as the undersigned supposes, the cruel murders committed in the Cherokee country. The evidence which has led this department to regard John Ross as the instigator and the abettor of those foul deeds of blood, as he is confessedly the defender of the murderers, shall be produced in the progress of the investigation which has been instituted.

In the mean time, it is the unalterable determination of the department to hold no communication with him. From the remaining portion of the delegation the undersigned is ready to receive any communication relating to the business which has brought them to Washington, but will hold no further correspondence with them in relation to John Ross.

Very respectfully, your obedient servant,

J. R. POINSETT.

Messrs. Joseph M. Lynch,
Looney Price,
Elijah Hicks,
Edward Gunter,
George Hicks,
Archibald Campbell,
John Looney.

No. 15.

War Department,
Office Indian Affairs, January 29, 1840.

Sir: By direction of the Secretary of War, I herewith transmit copies of the correspondence between the War Department and certain Cherokees claiming to be representatives of the Cherokee nation; also, a memorandum of the substance of what passed at an interview between the Secretary and Mr. Lewis Ross and two other Cherokees.

These papers you will transmit to Governor Stokes, with instructions to submit them to the Cherokee people of both parties.

Very respectfully, your obedient servant.

T. HARTLEY CRAWFORD.

Capt. Wm. Armstrong.

No. 16.

WASHINGTON CITY, *January* 8, 1840.

SIR: Presuming that every thing showing the state of affairs amongst the Cherokees, at this time, is of interest to the department, the undersigned have the honor to submit for its information the enclosed extract of a letter recently received from Mr. George W. Adair, one of the signers of the late Cherokee treaty. He is a gentleman upon whose statements all confidence may be placed. The council to which he alludes is that of the old settlers, convened on the 10th of October last. The undersigned have no expectation that the delegation spoken of by Mr. Adair will come on to this city, for the purpose of co-operating with us.

We have the honor to be, very respectfully, your obedient servants,

J. A. BELL,
STAND WATIE.

Hon. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs.

CHEROKEE NATION, *November* 26, 1839.

DEAR FRIENDS: Our council broke up harmoniously, and have done much credit to themselves. Brown has deserted his country, and gone to seek an asylum in Mexico. Our council organized, and filled up all vacancies. John Rogers was elected first chief, John Smith second chief, and Dutch third chief; Will Rogers treasurer; James Starr and John Hass executive council.

A resolution was passed organizing a supreme court, and John A. Bell was elected chief justice. Those white men who arrayed themselves against the civil authority of the country, and in favor of the proceedings of Ross, are to be expelled the nation. A law was also passed imposing a fine of five hundred dollars upon any one who shall attempt to enforce the laws of the Ross faction. Sheriffs and light-horse were appointed in each district, and authorized to press as many men as they shall require to enforce *our* laws. The chiefs were also, by the council, authorized to appoint and send on a delegation to co-operate with you. General Arbuckle has treated us with much kindness; he has made several unsuccessful attempts to arrest the murderers of the Ridges and Boudinot; they cannot be arrested but by sending out large military parties. John Ross and his delegation started on the 15th instant for Washington; they will be there before this reaches you. You must do all you can to throw the annuities into the hands of the old settlers, and to give them an equal portion of the *per capita*. Prevent Ross from selling the 800,000-acre tract. Colonel Adair says that Ross is desirous of making some new arrangement with the Government. It will not surprise me if we have a brush this winter between the authorities and adherents of the two governments.

No. 17.

WAR DEPARTMENT, *January* 30, 1840.

SIR: I transmit, herewith, a copy of a communication addressed to the department by three representatives of the treaty party of the Cherokees, stating the exasperated feelings which exist between their party and that of Ross, and suggesting a plan which will, in their opinion, tend to the pacification and to the advancement of the interest of the whole Cherokee people.

In compliance with the wishes of these gentlemen, you are requested, in conjunction with General Arbuckle, to devise and submit a plan by which the object they desire may be accomplished with the consent of the parties interested.

Very respectfully, your obedient servant,
J. R. POINSETT.

Captain William Armstrong,
Fort Gibson, Arkansas.

(Same to Brig. Gen. M. Arbuckle,
Fort Gibson, Arkansas;

Substituting the words "in conjunction with Captain William Armstrong," instead of "in conjunction with General Arbuckle.")

Washington City, *January* 22, 1840.

Sir: The late bloody proceedings of the Ross party among the Cherokees, in the murder of the Messrs. Ridges and Boudinot, the leading members of the treaty party, and the subsequent acts of what is styled the convention of the nation, in overthrowing the government of the old settlers, and in outlawing and hunting down the surviving prominent individuals of the treaty party, have so exasperated the feelings of these parties against each other, that it is no longer possible for them to live together as one community, subject to the same laws and government.

Deeply impressed with the correctness of this opinion, and ardently desiring that such a course may be adopted by the Government of the United States as will lead to the permanent settlement of these difficulties, and the advancement of the true interest of the whole Cherokee people, the undersigned, representing the treaty party, would respectfully suggest the following plan, as the best, in their opinion, to accomplish this object:

1st. A division of the Cherokee territory, so as to throw the old settlers and treaty party together, and all who may choose to stay with them, securing them in the right of self-government; and Ross and his party to themselves, leaving them to manage their own affairs.

2d. A division of the annuity of the nation between these parties. By a separation of this kind, those embittered feelings, growing out of the causes above enumerated, would gradually subside, and peace, instead of that strife and discord which is now prevailing, might be expected in a short time to wave her banner over the entire nation.

Should this suggestion meet with your favorable consideration, and should you conclude to carry it into effect, we would respectfully recommend that Captain William Armstrong and General Arbuckle be intrusted with its execution. We trust you will not deem it improper in us to state the course of policy which we, and those we represent, intend to pursue, in the event of our separation from the Ross party.

It will be our first object to cultivate peace and friendship with the people and Government of the United States, and, next to this, attend to the education of our rising generation. To accomplish this, we propose to collect as many of our intelligent citizens together as take an interest in education, and form a village, in which we will locate, if our means be adequate, a college, and such other institutions of a lower order as will be sufficient to accommodate all the youth of our country. We flatter ourselves that, by such a course as this, we shall in a short time be able to draw around us, and unite together, all the wealthy and intelligent of the country, without distinction of party; and it will not be too much to hope that, in a short time, we shall present to the world a spectacle different to what is now seen in our country—a community where good order and good security may be found, and where all will be engaged in feeding the lamp of science, that its light may be shed throughout the entire surrounding Indian community. There are, at this time, in the limits of the States of Georgia, North Carolina, and Tennessee, at least 1,200 Cherokees, many of whom are wealthy and intelligent, who would glory in joining us in this enterprise. We would, therefore, respectfully suggest that, in the event of the country being divided, a portion both of the annuity and the land be assigned to them with the treaty party.

We have the honor to be, very respectfully, your obedient servants,

WILLIAM ROGERS,
JOHN A. BELL,
STAND WATIE.

Hon. J. R. Poinsett.

No. 18.

Headquarters, 2d Dept., W. Division,
Fort Gibson, January 22, 1840.

Sir: I have the honor to transmit, herewith, two decrees of a convention of the Cherokee people of the 16th instant; also, a copy of my letter to that convention, under date of the 14th instant, and of a reply thereto of the 17th; and a certified list of the names of the old settlers who were present, and had previously joined the late emigrants, and who are included in the number of voters. It is, however, probable that about one hundred and fifty of the old settlers are in favor of the new government.

I do not believe that the vote given in favor of the new government of the Cherokee nation, at the late assemblage, is a majority of the voters of that nation, yet I have no doubt that a decided majority of the Cherokee people are in favor of that government; and as it has revoked its decrees in relation to the treaty party, I now regard it my duty, in compliance with the decision of the President of the United States, to notify the old settlers that their government has ceased. I expect to see their principal chief in a few days, when I hope it will be in my power to prevail on him to notify all his officers that their public duties have ended.

This change will no doubt be severely felt by the old settlers generally, who, in their kindness, invited the late emigrants to enjoy with them the lands they have secured for themselves, and who have, in less than one year after their arrival, formed a new government for the nation, in which the old settlers are not represented by a single individual of their own choice. This circumstance, however unjust they may regard it, will not, as I hope, lead to any serious rupture between the parties; yet, unless something is done to satisfy the old settlers at an early period, frequent violence and murders may be anticipated in the Cherokee nation.

The act of union referred to in one of the accompanying decrees is certainly not entitled to credit, as there were a very small number of the old settlers present who concurred in it, and they acted without authority.

There is, I believe, no doubt that the principal men of the late emigrants, with a few exceptions, excited their people against the treaty party in June last, and caused them to murder the Ridges and Boudinot; yet it is believed that such proof as would convict them of that offence in a court of justice cannot be had.

You will be promptly advised if a serious disturbance is likely to take place in the Cherokee nation.

In addition to the information contained in the documents referred to, you will herewith receive the report of Captain Page, of the 4th infantry, whom I ordered to attend the assemblage of the Cherokees on the 15th instant.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brig. General U. S. Army.

Hon. J. R. Poinsett,
Secretary of War, Washington City.

Whereas a decree was passed by the Cherokee people, in national convention, at the camp-ground near Illinois river, dated July, 1839, in reference to certain individuals who, by their conduct, had subjected themselves to the displeasure of the Cherokee people, and declaring them ineligible to office for five years: Now, for reasons satisfactory to the Cherokee people, and to evince to the Government of the United States their disinclination to involve their country in a difficulty with the United States in a matter of so small an import, therefore, we, the people of the Cherokee nation, in national convention assembled, do revoke and abolish the aforesaid decree, and the same is hereby revoked and abolished; and all persons who were affected by its provisions are declared to be entitled, under the constitution and laws of this nation, to the same privileges, immunities, and protection, as provided for and enjoyed by other citizens under the government of the nation.

Done at Tahlequah, Cherokee nation, this 16th day of January, 1840.

J. VANN,
Assistant Principal Chief.
W. SHOREY COODEY,
President National Council.

For and in behalf of from sixteen to seventeen hundred adult Cherokee males who voted in favor of the above; being no votes in the negative.

True copy:

S. G. SIMMONS, *Aid-de-camp.*

Whereas a meeting of the Cherokee people was agreed on and requested by the United States agent, and the assistant principal chief and others, on the 15th instant, at this place, and general notification given throughout the country to all parties whatever, and requesting their prompt attendance for the purpose of ascertaining fairly and properly the sense and choice of a majority of the nation in relation to the subject of their future government:

And whereas we, the people of the Cherokee nation, having assembled under this call, and having heard read and interpreted the act of union adopted by the Eastern and Western Cherokees, dated July, 1839, and the constitution framed by a convention composed of members from both parties, in pursuance of the provisions of the aforesaid act, and being satisfied with the same, we do hereby approve, ratify, and confirm the said act of union and constitution, and acknowledge and make known that the government based upon this act and this constitution is the legitimate government of the Cherokee nation, and our choice; and that it has both our confidence and support.

Done at Tahlequah, Cherokee nation, this 16th day of January, 1840.

J. VANN,
Assistant Principal Chief.
W. SHOREY COODEY,
President National Council.

For and in behalf of from eighteen to nineteen hundred adult Cherokee males who voted in favor of the above; there being no votes in the negative.

True copy:
S. G. SIMMONS, *Aid-de-camp.*

HEADQUARTERS, 2D DEPT. W. DIVISION,
Fort Gibson, January 14, 1840.

FRIENDS: I have received from your assistant chief, Mr. Joseph Vann, and others, an invitation to attend a meeting of the Cherokee people, on the 15th instant, for the purpose of being correctly informed (if I understand the object of the meeting) which of the two governments in the Cherokee nation is preferred by a majority of the people.

I would with great pleasure attend the proposed assemblage of your people, had not the old settlers refused to attend, and you failed to make a proposition calculated to settle the protracted contest for authority in the Cherokee nation on terms that would restore peace to the Cherokee people. I will, however, (as I am required to have peace restored to the Cherokee nation,) send Captain Page, an officer of high character, to witness or certify to any fact you may regard material to your pretensions to the government of the Cherokee nation.

The President of the United States has very justly recognised the right of a majority to rule; but, at the same time, he supposed that this right would be exercised judiciously, and in a manner not calculated to authorize murder and excite intestine commotions. If, therefore, your government has authorized murder and excited intestine commotions, you will perceive that these objections must be removed in a peaceable manner, before it is liable to be acknowledged by the United States.

Had your late council transacted the business for which it was mainly called, in the way anticipated, you would have been relieved from some of the embarrassments you labor under; yet, independent of these, from which you can relieve yourselves at the proposed meeting, you will perceive that it is necessary that you should restore peace to the Cherokee people.

I would ask you, how peace can be given to the Cherokees, and violence and murders be prevented in your nation, except by your uniting with the old settlers, who have made frequent propositions to you to effect that object, without success? And it appears that you must now be fully convinced that there is no other plan by which the present excitement in your nation can be allayed, and peace and security given to the Cherokee people. You are, no doubt, informed that John Smith, one of the signers of the treaty of 1835, and a chief of the old settlers, and Star, with several of the relations of the signers of that treaty, with some of the old settlers, have been compelled to leave their homes, of late, in consequence of attempts made to kill some of them, and threats, (as it is said,) by the late emigrants: and you cannot be uninformed that acts of violence take place very frequently of late in your nation, and that these outrages principally result from party feeling. How is this wretched state of things to be prevented, except by a friendly union of the parties on terms of justice, by which each party would be represented in a new government by individuals *of their own choice*, agreeably to their number?

It is not contended by any one, so far as I am informed, that the old settlers, and those that have joined them, are a majority of the Cherokee nation; therefore, if it should be decided that three chiefs shall be at the head of the Cherokee government, two of them, of course, would be from the late emigrants, and one from the old settlers; and if these chiefs were selected with discretion, you will, no doubt, fully agree with me, that peace would readily be restored to the Cherokee nation. And are not the peace and security of the Cherokee people to be preferred to a further effort, on your part, to sustain a government to which a large portion of your people are totally unwilling to submit, and in which they are not represented by a single individual? This is the question you have to decide; and I can assure you that it is a matter of no small importance to the Cherokee people how you decide it.

You are not to understand that I am authorized by the old settlers to suggest the terms on which they would be willing to enter into a union with you; yet I have ventured to make the foregoing remarks from the belief that they will not contend for more than they are justly entitled to. Their chiefs and a number of their principal men were here of late, (by an arrangement of their own,) when they were prevailed on (as they would not attend your meeting) to make another proposition to unite with you, which is herewith enclosed, and, if accepted by you, will, I believe, at an early period, give quiet to the Cherokee people, whose condition will be more deplorable if rejected. If the proposition be adopted, I will furnish provisions for the committees, and every accommodation in my power to enable them to transact their business with comfort; and I can assure you that no counsel will be given to any individual or party, by myself or those under my orders, unless called for by both parties.

I have already fully communicated to you my opinion of the only proper means known to me to restore peace to the Cherokee people, and I most earnestly hope that my views on this subject may receive from you the weight they are entitled to; and, from the unfortunate situation of the Cherokee people for the last six months, and nothing having been done to alleviate their sufferings, it now becomes necessary that something should be done, without further delay, to give them relief and quiet.

I request that you will favor me, at an early period, with the result of your deliberations in relation to the subjects referred to in this communication.

I am, gentlemen, very respectfully, your obedient servant,

M. ARBUCKLE,
Brevet Brig. General U. S. A.

JOSEPH VANN,
Assistant Principal Chief of the late Emigrant Cherokees, and others, at Tahlequah, near Illinois river.

True copy:

S. G. SIMMONS, *A. D. C.*,
and A. A. Adjt. Gen., 2d Dept. W. Division.

TAHLEQUAH, CHEROKEE NATION,
January 17, 1840.

SIR: The meeting of the Cherokee people, under an agreement for their assemblage with the United States agent, has taken place; and your communication of the 14th instant, with other papers in relation to the differences in the nation, read, interpreted, and duly considered.

The two enclosed papers will show the acts and proceedings of this meeting with regard to the decree of July, 1839, and the subject of the government of the nation. The decree was the act of the people who convened in July, and could only be removed by them; the national council having no authority to set aside an act adopted by the people. And this, it is hoped, will explain to you why the council in December did not act upon the subject, and chose rather to defer a reply to the honorable Secretary's communication until this time. The council could not then make such a reply as would be satisfactory.

You will perceive that the decree has been abolished, and that equal privileges and equal justice are secured to all, without exceptions of any kind. We regret the impression, which seems to have obtained, that our laws authorize *murder* and *intestine commotions;* and, in order that this error may be corrected, and that the Government and its public officers may be satisfied that such is not the case, the agent has been furnished with a copy of the constitution and laws. There is no wish to oppress any portion of our citizens, or to restrict the enjoyment of natural rights; on the contrary, efforts have been, and will be, used to maintain harmony and the culture of friendly intercourse among all people.

The other enclosed paper will show the will and choice of the great body of the nation in reference to our own local government. The constitution and new government has been again approved and confirmed; and upon both questions the vote of the people was witnessed by the agent and Captain Page, the fairness of which they can themselves state. It is believed that the views and wishes of the Government have been complied with as nearly as possible, and that all has been done which could be to restore quiet to the country. It is desirable that peace should prevail: and there is nothing to prevent it, unless the continued opposition of a small number to the known will and feelings of a large majority of the people should defeat this expectation.

As it regards the proposition of John Rogers and others for the appointment of a committee to meet at Fort Gibson, it will be proper to state, that all who hold office are required by the constitution to be sworn to a faithful discharge of the trust reposed in them; and an effort to destroy or change the provisions of this instrument, otherwise than by the mode prescribed, would be more than any are inclined to attempt. This council cannot change or alter the government, and, of course, could not bestow upon a committee such authority. The frightful picture of *crimes* and *proscription* which accompanies the proposal is altogether ideal; and the style of chiefs, used by the signers, gives neither weight nor authority. The appointment of those persons at the Double Springs was not in conformity with any previous usage or regulation, nor is it approved or sustained but by the very limited number who were there; and it may be properly said they represent only themselves.

The complaint that the old settlers are not represented in the new government we think ill-founded, when one of the two chiefs, and near one-half of all the officers of the government, are old settlers. The great object sought after in framing this government was a regular system of laws, equal rights, and equal justice—a system suited to the wants and improved condition of the people; and their proper execution cannot but tend to the preservation of order and the promotion of the general welfare.

It is our earnest desire that the Government of the United States may be fully satisfied of the peaceable disposition of all the Cherokee people, and that there does not exist any inclination whatever to disturb a friendship extending back to the administration of the first President of the United States, and which we are taught by every day's experience it is our interest to cherish and maintain.

The reports which have reached you that several of the treaty party, and their relations, have been forced to leave their homes in consequence of attempts to murder them, we are confident in stating are entirely incorrect. No such attempts have been made, either by the late emigrants or others; and we are satisfied that those reports have been founded either upon false fears, or a settled design to keep up excitement by their propagation, and ought, in justice to the nation, to be cautiously received.

We have the honor to be, very respectfully, your obedient servants,

WM. SHOREY COODEY,
President of the National Council.
YOUNG WOLF,
Speaker of the Council.
J. VANN,
Assistant Principal Chief.
DAVID CARTER,
Clerk of the Council.

M. ARBUCKLE,
Brevet Brig. General U. S. A.

True copy: S. G. SIMMONS, *Aid-de-camp.*

FORT GIBSON, ARKANSAS, *January* 20, 1840.

SIR: In pursuance to your instructions, I proceeded to the Cherokee council that assembled on the 15th of this month, and delivered the communications as directed. On the 17th inst. the letters were read and interpreted to the council; the decree that was passed by the Ross party (so called) was revoked, and gave such Cherokees of the treaty party that were affected by said decree all the rights, privileges, protection, &c., that all other Cherokees enjoyed.

A vote was taken on the subject, and passed unanimously, with the exception of one man; on counting the number of votes, I found them to be from seventeen hundred to eighteen hundred and fifty-five. Mr. Holt, one of the old settlers, and who belongs to the treaty party, was in attendance by request of his people, took down the names of the old settlers that attended the council; he reported to me thirty-five were present, and, out of the thirty-five, thirty-three voted with the Ross party. The chiefs of the Ross party have shown a list consisting of one hundred and fifteen persons that they call the old settlers. How far this statement is correct, I am unable to say; it differs much from that of Mr. Holt, who was selected by the treaty party to attend the council.

With respect, I have the honor to be, your obedient servant,

JOHN PAGE,
Captain 4th Infantry.

Brig. General M. ARBUCKLE, *Commanding.*

Names of the old settlers who voted in favor of the constitution of the late emigrants at Tahlequah, January 16, 1840.

1 Young Wolf
2 Jesse Wolf
3 Thom. Wolf
4 John Wolf
5 Lewis Melton
6 Looney Riley
7 Josiah Wicket
8 Charles Coody
9 Rufus Coody
10 Ingarim Coody
11 Arch. Coody
12 William Keys
13 Isaac Keys
14 Riley Keys
15 Leroy Keys
16 Charles Gourd
17 Stinking Grease
18 Robert Colston
19 Thomas Candy
20 George Fields
21 Rider Fields
22 Daniel McCoy
23 Robert Robuck
24 William S. Davis
25 Thomas Davis
26 David Castor
27 Thomas Terrell
28 Moses Paris
29 Swimmer
30 Jos. Drew
31 William Tucker
32 Charles Wicket
33 John Rogers
34 Thomas Tucker
35 Thomas Taylor
36 The Eagle
37 July
38 Thomas Burtholf
39 Gun Rod
40 Jos. Vann
41 David Vann
42 Chu-wa-loo-kee
43 A. Cockeran
44 M. Cockran
45 Robert Paris
46 A. Paris
47 William Willson
48 George Drumgold
49 Mink
50 Wallet

51 Ooh-loo-killer
52 Nick Mule
53 Walla-ne tah
54 Smoker
55 Tun-noo-ah
56 Robert Brown
57 Tom Pegg
58 Woman-holder
59 Sultees Ky Watts
60 Go-about
61 Old Doctor
62 Peter
63 Aaron Price
64 Jesse Russell
65 Big Pheasant
66 Isaac Busheyhead
67 Ah-stoo-lah-tah
68 Buck Elk
69 James M. Payne
70 She Cow
71 George Guess
72 Tar-lah see-nah
73 William Watts
74 Young Puppy
75 Phillican
76 Logan
77 Wasp
78 Keener
79 To-ke-cunner
80 Girth Jolly
81 John Shepherd
82 John Thom
83 Jacob Thom
84 Lewis Riley
85 William Burges
86 Ed. Burges
87 Cling
88 J. Robins
89 Robert Waters
90 Wm. S. Coody
91 Daniel Coody
92 Sam Taylor
93 Nelson Harlan
94 J. Nickolson
95 Wm. Nickolson
96 Young Toney
97 Jack Spears
98 Joshua Buffinton
99 J. A. Thompson
100 William Thompson
101 William Rogers
102 Charles Landrum
103 H. Landrum
104 Johnson Fields
105 J. Gowen
106 John Boston
107 Charles McDonald
108 A. McLughlin
109 Johnson Foreman
110 Jos. Back
111 Bird Doublehead
112 Ground Hog
113 Dave Nightkiller
114 James Studeman
115 Landrum

CHEROKEE AGENCY,
Bayou Menard, January 18, 1840.

I hereby certify that the foregoing list of old settlers of the Cherokee nation west was delivered to me by the council and chiefs at the late meeting at Tahlequah, and I have reason to believe that it is correct.

M. STOKES,
Agent for Cherokee Nation.

CHEROKEE AGENCY,
Bayou Menard, January 22, 1840.

SIR: I take the earliest opportunity to inform you of the late proceedings of the Cherokee people, as regards their domestic troubles. I think that the present state of affairs is as favorable as could be expected, considering the great excitement that disturbed a part of the nation after the death of the two Ridges and Boudinot. It appears to me that General Arbuckle and the War Department were under the impression that these murders were authorized by law, or by an order of the chiefs. I have conversed with, and interrogated, five or six of the old settlers who have not joined the Ross party; and it is my belief, from the best information I can obtain, that the murders were not ordered or sanctioned by the chiefs and principal men. And as to the acts of the Cherokee legislature, they have furnished me a copy of their constitution, and of all the laws passed under it; and I do assure you that there is not one word or sentence which tends to the encouragement or sanction of those murders. I will send you their constitution and laws as soon as I can copy them. The papers I send you will show that I have spent much time, and undergone much labor, and expended my own money, to put to rest this vexed question. I care not for the expense nor the trouble, if the question shall be finally settled; and I think it is now settled.

I will copy, for your information, as many documents as I can in the short time I can command at present.

I am, with very great respect, your obedient servant,

M. STOKES,
Agent for Cherokee Nation.

Hon. J. R. Poinsett, *Secretary of War.*

[Papers sent: No. 1, Report of Cherokee Council; No. 2, Act approving the constitution; No. 3, Act repealing the decree of outlawry.]

Tahlequah, Cherokee Nation,
January 17, 1840.

Sir: The national council (now in session) have again before them the communication submitted to the late meeting in December, in relation to the difficulties among the Cherokees; and also the letter addressed to General Arbuckle and yourself, by John Rogers, John Smith, and Dutch, dated 27th December, 1839.

The council, in December, did not believe that they could then make such a reply to the several subjects embraced in the papers submitted by yourself and General Arbuckle as would be satisfactory to your Government, and particularly in reference to the decree of July, 1839, of which the President had signified his disapproval; and chose rather to defer their reply until the assemblage of the people on the 15th instant, as was then agreed. This decree was not the act of the legislative council, but of the people, and could only be rescinded by the same authority. The assemblage of the people has afforded the first and only opportunity for any proper measure in relation to this matter, and the enclosed papers will show their proceedings, both in regard to this, as well as the subject of their future government. The decree of July has been abolished by the people, and the voting was witnessed by yourself and Captain Page, who attended the meeting at the request of General Arbuckle. It was passed prior to the act of union between the Eastern and Western Cherokees, and, of course, before the adoption of the constitution, which followed that act. In this constitution, and all the legislation by the national council, there is no allusion or reference to the decree, nor is there a single word which marks a difference or distinction with regard to the enjoyment of equal rights, privileges, and justice, among all the Cherokee people.

We regret the impressions which seem to be entertained by the honorable Secretary, that our laws or public acts authorize *murder* and *intestine commotions ;* and that you may be fully satisfied of the truth of our denial, we forward you a copy of the constitution and laws for your examination.

The sense and choice of a large majority of the Cherokee nation in relation to the subject of their own local government, you will find fairly and correctly made known in the other enclosed paper, the voting on which you also witnessed with Captain Page. The constitution, you will discover, requires of all persons holding office to be sworn, and they are bound by oath to its support. It was approved and ratified by the people before the election for officers, and it has been again confirmed. How, then, can these officers or this council delegate twelve persons to meet at Fort Gibson, as proposed by Rogers and others, and proceed, by their act or bargain, to alter or change the form or provisions of this government, in opposition to the expressed will and choice of the majority of the people? The council cannot change this constitution, much less can they bestow upon individuals the power to do so.

There may be a small portion of our citizens who, from some circumstances, are dissatisfied ; but it is not believed even that fact can justify the introduction of new difficulties and greater excitement, as would assuredly be the case if a change of government be attempted merely to gratify a small number who are in opposition. It is not admitted that those who signed the letter to you of December 27th are in truth chiefs of the Western Cherokees. There are no Western Cherokees in contradistinction to *Eastern* Cherokees. They are all the same, inhabiting the same territory, and possessed of the same rights and the same interests. They are again made one people by the acts of the United States and their own. The meeting at the Double Springs last fall, which gave to the persons the name of chiefs, represented only the few who were there, and not the people of the country. The usages and regulations of the old settlers, as prevailed while they were separate, did not legalize their acts ; they were not observed. The people sent no members to that council, and the few persons who attended there possessed no lawful right to act for them. The question in relation to the future government of the nation we consider settled. All has been done which seems to have been required on our part, and the people have spoken for themselves. The wishes of the President have been complied with as far as understood, and this council is not aware that any thing more can be done. The establishment of a regular government—a government of laws, and not of undefined regulations—has been our highest aim ; under which equal justice shall be meted to all, and the peace and improvement of our people secured and advanced.

Very respectfully, your obedient servants,

W. SHOREY COODEY,
President National Committee.
YOUNG WOLF,
Speaker Council.
J. VANN,
Assistant Principal Chief.
DAVID CARTER,
Clerk Council.

M. STOKES, Esq., *United States Agent.*

CHEROKEE AGENCY,
Bayou Menard, January 22, 1840.

I hereby certify that the foregoing is a true copy of the report made to me by the Cherokee council which convened at Tahlequah, in the Cherokee nation on the 15th January, 1840.

M. STOKES,
Agent for Cherokee Naiion.

CHOCTAW AGENCY, *January* 29, 1840.

SIR: I returned a few days since from Fort Gibson. A meeting was called for both parties to attend, consisting of old settlers and new emigrant Cherokees, the object being to ascertain which party had the majority. The old settlers did not attend, as they were doubtless well aware that they were in the minority. There were about seven hundred voters present who were in favor of the new government; they voted in favor of the constitution and laws of the Ross party, and repealed the decree of outlawry against certain other Cherokees: this places all upon an equal footing. I consider the peace of the country the great object to be obtained, and a matter of no importance to the Government who rules, provided the obligations of the United States are not violated.

As the late party have the majority, (perhaps two-thirds,) and the old settlers would not attend, I have determined to recognise the late government in such transactions as either their agent or myself may have with them. The Secretary of War having decided in favor of the majority, and the obnoxious decree being repealed—placing all on an equal footing—I have every reason to hope that peace will be restored. I have earnestly pressed the majority to rule with great forbearance: they have promised to avoid every thing calculated to excite the other party; and if things keep quiet for a few days, all will be harmony. Should this desirable object be obtained, the wants of the Cherokees are so great, that I would recommend the money due for abandoned improvements to be paid them.

I have the honor to be, your obedient servant,

WM. ARMSTRONG,
Acting Superintendent W. T.

T. HARTLEY CRAWFORD, Esq.,
Commissioner of Indian Affairs.

No. 19.

WAR DEPARTMENT, *March* 6, 1840.

SIR: Finding, from the accounts lately received from Fort Gibson and the Cherokee country west of the Mississippi, that the difficulties originating there from the tyrannical and oppressive conduct of the emigrating party towards the old settlers are not yet adjusted, I think it proper to confide their settlement altogether to the military authority in that section. You will accordingly instruct Mr. Stokes, the agent for the Cherokee Indians, to suspend the exercise of his functions until further orders, and, in the mean time, to take no part in the councils of the Indians, public or private, but to abstain entirely from all interference with the affairs of the Cherokees, whether in matters arising out of the pending difficulties between distinct portions of the nation, or from other causes.

Very respectfully, your most obedient servant,

J. R. POINSETT.

T. Hartley Crawford, Esq.,
Commissioner of Indian Affairs.

War Department,
Office of Indian Affairs, March 7, 1840.

Sir: I enclose herewith the copy of a communication received yesterday from the Secretary of War, and, in obedience to his directions, have now to instruct you to suspend all action whatever, as agent for the Cherokees, from and after the receipt of this letter, until otherwise ordered.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

M. Stokes, Esq.,
Fort Gibson, west of Arkansas.

War Department,
Office of Indian Affairs, March 7, 1840.

Sir: Herewith I transmit the copy of a communication received yesterday from the Secretary of War, and of my instructions of this date to Mr. Stokes, in conformity to its requirements. You will please to see that they are obeyed.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Captain W. Armstrong,
Choctaw Agency, west of Arkansas.

War Department, *March* 7, 1840.

Sir: Your despatch of the 8th of February last has been just received by the hands of Captain Page, and I regret to perceive by its tenor that the troubles which have attended the tyrannical and oppressive acts of the late emigrating party of the Cherokee nation have not yet been terminated.

The Government regrets this, and especially its inability to carry into full effect the principle it is desirous of establishing, as well in the Indian country as elsewhere—that the majority should govern, without violating the rights of the old settlers, which the Government is bound to protect. The case contemplated by the 6th article of the treaty of New Echota appears to have occurred, and the period to have arrived when the active interference of the Government has become necessary "to protect the Cherokee nation from domestic strife," which would lead inevitably to intestine wars, and probably involve all the neighboring tribes in the contest. You are, therefore, instructed to take all necessary and proper measures to bring about the following results: the adoption of a constitution, that will secure to every individual Cherokee his personal and political rights, and the free enjoyment of life, liberty, and property; annulling, now and forever, all such barbarous laws as those under which Boudinot and the Ridges were put to death, and the penalty of outlawry inflicted upon innocent men. You must be aware that all such laws are inconsistent with the constitution of the United States, to which, by the treaty, they are bound to conform. The Government, not having seen the constitution said to have been agreed to in convention, and not being acquainted with the form of its adoption, is ignorant whether it received the sanction of the old settlers as well as of the late emigrants, and whether its provisions are conformable to the constitution and laws of the United States. You will, therefore, warn the council of the necessity of framing their constitution and laws in such manner and terms as that they will not be inconsistent either with the constitution of the United States, or such acts as have been passed by Congress to regulate the trade and intercourse with the Indians. Let the same council elect chiefs, whose duties shall have been prescribed by the constitution; and as it appears impossible for the Government of the United States to perform the duty assigned to it by the section of the treaty above alluded to, in any other manner, you are instructed to insist that the old settlers shall be represented in the government to be created under the provisions of the constitution to that effect; and that one third of the chiefs shall be chosen from the Western and two-thirds from the Eastern Cherokees. Strong and, in the opinion of this department, well grounded suspicions point to John Ross as the instigator and abettor of the foul murders committed upon the bodies of the two Ridges and Boudinot; and it appearing, from undoubted testimony, that he took no step to arrest the murderers, but used, on the contrary, every effort to shield them from the punishment due to their crimes, the conclusion is irresistible, that he is *particeps criminis.* He must be regarded as conniving at those acts; or, viewing his conduct in the most favorable light, as unable to protect the Indians under his charge, and unwilling to punish the assassins. Under these circumstances, he is excluded from all participation in the government; as is likewise William Shorey Coodey, who, in conversation with me, in my office, persisted in considering the murders committed by the Cherokees upon the persons of Boudinot and the Ridges as justifiable. Men who entertain such opinions are unfit to be intrusted with power, and would soon again involve the nation in domestic strife, from which we are now called upon by our solemn compact with the Cherokees to protect them.

As it is understood by the department that the Cherokee people are likely to be distressed for want of provisions, you are authorized to supply such of them as require and desire it with rations, for the period it may be necessary to feed them, not exceeding five months; it being expressly understood, that the cost of these supplies will be charged to the nation, and deducted, from the payments to be made of the surplus due them *per capita*, from all such as partake of these supplies, to the amount furnished each Indian.

Very respectfully, your obedient servant,

J. R. POINSETT.

Brigadier General M. ARBUCKLE,
Fort Gibson, Western Territory.

P. S.—You will perceive, from the enclosed copy of a letter to the Commissioner of Indian Affairs, that the functions of the agent for the Cherokees have been suspended, and that the whole management of our relations with them is, for the present, committed to the military authority.

No. 20.

Headquarters, 2d Dept. W. Division,
Fort Gibson, January 28, 1840.

Sir: I had the honor, on the 22d instant, to address you in relation to the state of affairs in the Cherokee nation. Since then, I was visited by the chiefs of the old settlers, and some of their friends, when I informed them of what had been done at the late assemblage of the Cherokees near Illinois river, and that, agreeably to the decision of the President of the United States, I was of the opinion that their government had ceased. To this they did not make a distinct reply, but remarked that, in relation to a matter of so much importance, they desired to consult the principal men of their government, and requested me to permit them to meet at this post on the 2d or 3d of the next month, for this purpose, and that I would furnish them with provisions for three or four days. I assured them of my willingness to comply with their wishes, as the number they propose inviting to their council will probably not exceed twenty or twenty-five. They are greatly dissatisfied with the late decision of the Government, and assured me that it was their intention to claim of the United States the undisturbed possession of seven millions of acres of land, which they think they are entitled to; and that all the Cherokees who have not voluntarily removed to this country, and have refused to unite with them, shall be removed from the land they claim; otherwise, that they shall be permitted to enjoy a fair participation in the government of the Cherokee nation, and receive an equal share of the sum to be paid for the sale of the Cherokee country east, as provided for by the 15th article of the treaty of 1835.

I would remark, as respects the contest for authority in the Cherokee nation, that, if I were permitted to exercise my own judgment, I would at once dissolve the two governments in that nation; and, as they cannot themselves settle this matter, without great risk of serious misfortune to their people, I would give to each party a fair representation in the new government, agreeably to their number. This, I believe, would soon give quiet to the people. I will, immediately after the meeting of the old settlers at this post, advise you, by Captain Page, of the 4th infantry, of their proceedings and intentions, so far as they are known to me.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brig. Gen. U. S. A.

Hon. J. R. Poinsett,
Secretary of War, Washington City.

No. 21.

Headquarters, 2d Dept. W. Division,
Fort Gibson, February 8, 1840.

Sir: I have the honor to transmit, herewith, the proceedings of the old Cherokee settlers, or their principal men, who are now here; and I much regret to notice, by them, that the troubles in the Cherokee nation have not yet ended, provided the old settlers are to be deprived of a fair participation in the government of their nation; and as they appear to make this the material point, and for which they will contend, I hope it will receive the consideration it is entitled to by the Government, which will, as I judge, prevent further difficulties in this nation.

I am now satisfied that the old settlers will not peaceably surrender what they regard their rights; and that, if the Cherokees should be so unfortunate as to resort to further violence against each other, other tribes will have more or less concern with these difficulties. This is forwarded by Captain Page, of the 4th infantry, (who has been detailed for the recruiting service;) and as the steamboat he is going on board of is about to leave this, it is necessary that I should refer you to him for further particulars in relation to the protracted difficulty in the Cherokee nation.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brig. Gen. U. S. A.

Hon. J. R. Poinsett,
Secretary of War, Washington City.

Fort Gibson, *February* 7, 1840.

We, the Select Committee, to whom was referred the investigation of the right of John Ross and his partisans to the government of the Cherokee nation west, without the consent of the original settlers, do most respectfully beg leave to report the following as the result of our investigation:

In the treaty of 1817, an agreement was entered into by the Government of the United States with the whole Cherokee people east of the Mississippi. Those who wished to remove were permitted to send out an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, with the promise that when this party should have found a country suiting the emigrants, and not claimed by other Indians, the United States would arrange with them, and give in exchange for the country they were to leave a just proportion of lands, according to their numbers.

In 1819 another treaty was entered into between the United States and the Cherokees. In said treaty, the contracting parties agreed that one-third of the annuities due the Cherokees under former treaties should be paid to the Cherokees west; which plainly demonstrates that we were considered as a separate community.

In 1828 the Cherokee nation west entered into a treaty with the United States, in which they exchanged the lands that were ceded to them by the treaty of 1819 for a country better adapted to them, with the solemn guaranty to said country from the United States, that it should "be and remain theirs forever, a home that should never in all future time be embarrassed, by having extended around it the lines, or placed over it the jurisdiction of a Territory or State." And in this treaty the bounds of our country were described, and provision made for such of our brethren in the eastern nation as should see proper to come and join us in the west; and all that came we welcomed, and gave them a free participation in our sovereign rights. But never have we yielded any of our rights as a sovereign and independent nation. The treaties that have been made by us with the United States plainly show that we were an independent community from the Eastern Cherokee nation. *This fact* has been *admitted* by themselves, in *protesting* against some of the provisions of the treaty we made with the United States in 1828.

In 1833 our nation negotiated another treaty with the United States Government; and our people, being jealous of their rights, and wishing to prevent collision with any of the States or Territories of the United States, or any emigrating community that might thereafter come to the west, bound the United States as follows:

Article 1st. "The United States agree to possess the Cherokees, and to guaranty it to them forever, and that guaranty is hereby pledged, of seven millions of acres of land." The article then goes on to describe the bounds of the said "seven millions of acres" in the same article. "In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend: *Provided*, *however*, That if the saline or salt plain, on the great western prairie, shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; and letters patent shall be issued by the United States, as soon as practicable, for the land hereby guarantied."

In 1835 our chiefs convoked our national council at Tuttanleesky, to consult upon the proposed treaty to the Eastern Cherokee nation; and, to guard our rights, it was determined to appoint a delegation for that purpose. The instructions to said delegation are as follows:

"The national council, by direction of the chiefs, have selected four delegates, Messrs. Joseph Vann, William S. Coodey, John Smith, and John Drew; and, if possible, to effect such arrangements as will unite the two people into one upon the Arkansas, and upon such principles as will be satisfactory to both the Eastern and Western Cherokees, they are also instructed to attend to any and every thing which involves the interests of the Western Cherokees. And in the event that our delegation should not be able to effect such arrangements in the Eastern Cherokee nation, and they think it necessary and expedient that they should repair to Washington, they are instructed to do so; that is, if they believe they can effect an object of interest to the nation sufficient to justify their going there. And, in the event that the delegation should go on to Washington, you are respectfully requested to inform the Secretary of War, and apprize him of the nature of their visit to that place. You will please, also, to make any necessary arrangement for the convenience of the delegation, which will place or present them to the department upon such terms as will enable them to effect the object in view—that is, to unite the two people into one, on the Arkansas, upon such principles as will be satisfactory to the people east and west. This will be handed by the principal chief." [Addressed to Captain Vashan, U. S. agent for Cherokees.]

But two of our delegation, viz: James Rogers and John Smith, went to the Cherokee nation east; and in their acts they varied in some measure from their instructions, as will be seen from a note, addressed to James Star and others, from John Smith, one of the western delegation, accompanying a communication from our chiefs. The note reads as follows:

"Now you see, from this letter, what I told you all when you wished me to sign the treaty. I told you that I would sign it, though it was not agreeable to our instructions. Your and our people can settle it hereafter."

But, notwithstanding our delegation did not adhere strictly to their instructions, they did not cause our sovereign rights to be infringed upon by the treaty of 1835, as may be seen in an article attached to said treaty; it reads as follows:

"Whereas the Western Cherokees have appointed a delegation to visit the Eastern Cherokees, to assure them of the friendly disposition of their people, and their desire that the nation may again be united as one people, and urge upon them the expediency of accepting the overtures of the Government, and that, on their removal, they may be assured of a hearty welcome and an equal participation with them in all their benefits and privileges of the Cherokee country west; and the undersigned, two of said delegation, being the only delegates in the eastern nation, from the west, at the signing and sealing of the treaty lately concluded at New Echota, between their eastern brethren and the United States, and having fully understood the provisions of the same, they agree to it in behalf of the Western Cherokees. But it is expressly understood that nothing in this treaty shall affect any claims of the Western Cherokees on the United States."

It is plainly to be seen, from the foregoing quotations and references, that every attribute that constitutes a sovereign and independent community has been acknowledged in us, time after time; and, if we *are* an independent community, there are but two ways that Mr. Ross and his partisans can legally obtain our government—these are, by *conquest*, or by our *consent*. We deny, most positively, ever yielding our government to them in either of these ways.

Be it therefore resolved, That the conduct of Mr. John Ross and his partisans is an unprecedented act of usurpation, unfounded in justice, law, or humanity; and we will not, in all future time, acknowledge the same.

Resolved, That the only legitimate government of this nation is the one handed down to us by the original settlers of the Cherokee nation west, and we will, to the utmost of our power and ability, uphold and defend the same.

WILLIAM HOLT,
President of the Select Council.
GEORGE W. ADAIR,
THOMAS ROGERS.

Concurred in by the council:

WILLIAM HOLT,
President of the Council.
JOHN CANBY,
Clerk of the Council.

Approved:

JOHN ROGERS,
Principal Chief.
JOHN SMITH,
DUTCH.

THOMAS WILSON,
Secretary to Chiefs.

True copy:

S. G. SIMMONS, *A. D. C.*,
and A. A. Adj. Gen. 2d Dept. W. Division.

War Department,
Office Indian Affairs, March 27, 1840.

Sir: The national council of the old settlers and treaty party, convened at Fort Gibson from the 2d to the 8th of February last, appointed Messrs. Dutch, William Rogers, George W. Adair, James Carey, senior, Alexander Foreman, Moses Smith, John Hass, and William Holt, a delegation "with full and ample powers to transact legally all business with the United States for and in behalf of the Cherokee nation west." At the same time, the council passed two resolutions: 1st. "That the conduct of Mr. Ross and his partisans is an unprecedented act of usurpation, unfounded in justice, law, or humanity; and we will not, in all future time, acknowledge the same." 2d. "That the only legitimate government of this nation is the one handed down to us by the original settlers of the Cherokee nation west, and we will, to the utmost of our power and ability, uphold and defend the same."

These resolutions are preceded by a preamble, which seems to me to be founded in erroneous views of the relative positions of the two parties into which the Cherokees have unfortunately split; on which I think it right that the department should express its opinions to the above delegation, so that they may not longer deceive themselves by holding on to a position that, it appears to me, cannot be maintained.

The preamble recites the various treaties made in 1817, 1819, 1828, 1833, and 1835, with the Cherokees, and, after making references to, and quotations from them, concludes that "it is plainly to be seen from" them "that every attribute that constitutes a sovereign and independent community has been acknowledged in us, time after time; and, if we are an independent community, there are but two ways that Mr. Ross and his partisans can legally obtain our government—these are, by *conquest*, or by our *consent*. We deny, most positively, ever yielding our government to them in either of these ways."

If it is meant to assert that the Western Cherokees are an independent and sovereign community, in the full sense of the word, it cannot be admitted for an instant. The United States have, in the modified form prescribed by treaties, control over them, in common with all other Indians, within the boundaries of our country. Such a power is indispensable to the preservation of peace, and the advancement of the Indians in civilization; and has been, and must continue to be, exercised as an attribute of the sovereign power on all proper occasions. It is not probable, however, that they referred to their independence in any other sense than as concerns their relation to the Eastern Cherokees, or late emigrants. Are they right in that, or in the proposition, (not directly put forth, but contained in every line of the preamble and resolutions,) that the 7,000,000 acres of land, secured by the treaty of 1828, belong to them, to the exclusion of those lately removed?

The policy of the United States, enjoined by their obligations to extinguish the Indian title to the land possessed by the Indians east, has been to remove the whole Cherokee people. The first emigrants, or old settlers, were undoubtedly a community who had a right to prescribe a form of government and laws to regulate their own conduct, subject, however, to the enlargement of their number, from time to time, as the emigration from the east progressed. Those removing were to be incorporated, as they arrived, into the original mass; forming, however, I think, one community under every accession.

The treaty of 1817 was made with the whole tribe, which ceded to the United States the proportion of lands east of the Mississippi, to which those Indians then in Arkansas, and then about to remove, were entitled; in consideration whereof, the Government agreed to give them acre for acre on the Arkansas and White rivers, in what is now the State of Arkansas, and that the annuity due the tribe should be divided, in proportion to their numbers, between those east and west. The treaty of 1819 is made with the Cherokee nation, and contains a further cession of land east, at least as extensive as that which they probably are entitled to under the provisions of the treaty of 1817. This instrument provided for the payment of one-third of the annuity to the Indians west, and two-thirds to those east. So far, perhaps, there is some ground for the allegation that the Cherokees west owned the land beyond the Mississippi; but even that it might be difficult to establish, as there was no restriction upon emigration, and the evident object of the Government was to encourage it. The division of the annuity was a mere equitable mode of arriving at a substantially just distribution of it. The treaty of 1828 put an end to all possible question on the subject, if it did not furnish the proper construction of all that had previously been done. The preamble recites that it was "the anxious desire of the Government of the United States to secure to the Cherokee nation of Indians, as well those now living within the limits of the Territory of Arkansas, as those of their friends and brothers who reside in States east of the Mississippi, and who may wish to join their brothers of the west, a permanent home," &c.; that the land then occupied by the Western Cherokees was surrounded by a white population, and, as a consequence, by all the deteriorating influences which had been so destructive to them in times past, and the desire of the Indians to rid themselves of these influences. This treaty, which was made with the Western Cherokees, contains a surrender of all the land in Arkansas secured to them by the treaties of 1817 and 1819, and the United States agreed to appropriate to the above use (permanent homes for all the Cherokees east and west) seven millions of acres of land, with an outlet west, as far as the sovereignty of the United States extended. Nothing can be more explicit; and if it was not, it would seem there could be no doubt of the intention, for the seven millions would give every Cherokee west, (reckoning them at 6,000,) man, woman, and child, near 1,200 acres of land; which would be preposterous. I have not noted the various other provisions in these treaties, but only so much as seemed to be necessary to satisfy the delegation they had mistaken their rights in both points stated at the commencement of this communication. The treaty of 1833 does not vary the rights of the Cherokees in the particulars under consideration, but was made to arrange an interference between the Creek and Cherokee lands west; describes, with precision, the boundaries of the latter; and releases whatever, under the treaty of 1828, had fallen within the Creek limits. The last treaty, concluded in 1835, recites the description of the land west, as contained in the treaties of 1828 and 1833; and, from an apprehension that the body did not contain "a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi," the United States agreed to give them 800,000 acres additional, in consideration of $500,000, and to issue a patent for 7,800,000 acres, with an outlet west, to the "Cherokee nation of Indians."

Provision was made for the removal of the late emigrants to the 7,800,000 acres so set apart, and they have been removed and subsisted there. If there had been no prior recognition of the purposes for which this land was appropriated, it might be contended, with some show of plausibility, that the last treaty was made with the Eastern Cherokees, and that they and the United States could not impair the rights of those west; but there was a full acknowledgment of the general right in the treaty of 1828, which does not require the aid of the admissions of James Rogers and John Smith, "delegates from the Western Cherokees," appended to the treaty of 1835, on the 31st December.

It therefore seems to me that the Western Cherokees were only contingently a separate community from the eastern body of these people. They were subject to increase by the emigration of those east, who, according to the construction I put on the various instruments and acts recited, were to fall into the body they joined west, and become a part thereof. They are not, consequently, a separate, independent community; nor have they any ownership of the land, except that which belongs to them in common with the whole Cherokee people.

While on the subject of the rights of the respective contending parties, it may not be improper to express the views of the department as to their pecuniary rights under the treaty of 1835. The consideration in the original treaty was $5,000,000, of which $500,000 was applied to the purchase of 800,000 acres of land, by the 2d article; $600,000 was added by the supplement, and $1,047,067 was given by the law of 12th June, 1838; making an aggregate of $6,147,067, exclusive of the above $500,000. This sum was to be applied to removal and subsistence; to the payment of the Cherokees for their improvements, ferries, reservations, and spoliations upon their property; to the payment of such just debts and claims as the Cherokee nation owed to its own citizens; $60.000 for the just claims of citizens of the United States for services rendered to the nation; $200,000, in addition to the present annuities of the nation, to constitute a general fund, the interest of which shall be applied annually, by the council of the nation, to such purposes as they may deem best for the general interest of their people; $50,000 to constitute an orphans' fund; $150,000, in addition to the present school fund of the nation, shall constitute a permanent school fund, the interest of which shall be applied annually, by the council of the nation, for the support of common schools, and such a literary institution of a higher order as may be established in the Indian country; and $100,000 was appropriated by the 12th article to the relief of the poorer class of Cherokees who have removed or shall remove west, and are entitled to the benefits of the treaty; but this last sum was, by the 4th article of the supplement, transferred to, and made a part of, the general national fund of $400,000, thereby increasing it to $500,000. After these several charges were met out of the aggregate sum in the original treaty, the supplement, and the law of 1838, "the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed, and such Cherokees as have removed west since June, 1833, who are entitled, by the terms of their enrolment and removal, to all the benefits resulting from the final treaty between the United States and the Cherokees east. They shall also be paid for their improvements, according to their appraised value, before their removal, where fraud has not already been shown in their valuation." In the distribution of the balance, those only, then, by express provision of the treaty, can participate, who are on the census of 1835, or (as I construe the 15th article, though it is inartificially worded) who emigrated since June, 1833, and who are entitled, by the terms of their enrolment and removal, to all the benefits of the treaty of 1835. So many of the Western Cherokees as come within the last description would be participants; all the others excluded from any share of the balance after the deductions mentioned are made.

In what would all the Western Cherokees have an interest? In the $500,000 invested: as a general fund, to the amount of $300,000; for orphans, $50,000; and as an addition to the school fund, $150,000; making the above sum of $500,000. The permanent annuity of $10,000 was, by the 11th article, commuted for $214,000, to be invested as a part of the general fund of the nation; and the school fund, before the treaty of 1835, amounted to $51,138.

1st.	The general fund of the nation	$514,000	
2d.	Orphan fund	50,000	
3d.	Additional school fund	150,000	
			$714,000 00
	$714,000 netted in stocks		$708,761 39
4th.	Old school fund		51,138 00
			759,899 39

These several funds belong to the tribe in general, and are under the control of the national council; and in these only, it seems to me, are the entire community, embracing the whole body of the Western as well as Eastern Cherokees, entitled to participate. The balance that shall remain, after the specific uses to which the $6,147,067 were devoted shall be met, must be distributed according to the limitations in the treaty.

It is to be observed, in conclusion, that the Western Cherokees are to bear no part of the expenditure under the 18th article, but are to receive their proportion of the two years' annuity mentioned in that article, according to its express stipulation.

I have made this communication in the belief that the delegation from the old settlers and treaty party should know what they may expect, and because, in some of the particulars on which I have remarked, they are in error, and it is advisable they should not be misled as to the views entertained here. If you should concur in this opinion, I respectfully recommend that a copy of this communication be sent to them.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Hon. J. R. Poinsett,
Secretary of War.

Concurred in, and to be transmitted to the delegation of the Western Cherokees, as the opinion of the department in reply to their memorial.

J. R. POINSETT.

No. 22.

HEADQUARTERS, 2D DEPT. W. DIVISION,
Fort Gibson, February 10, 1840.

SIR: I had the honor, on the 8th instant, to address you by Captain Page; and was this day informed by the chiefs of the old settlers that they have appointed a delegation of eight to proceed to Washington, (at their own expense,) with the object of making known their situation to the Government, and claiming its action in their favor to sustain them against (what they regard) the unjust acts of John Ross and his partisans.

I had supposed, from some remarks made by the old settlers before their late meeting, that it was their intention to question the right of Mr. Ross and his adherents to settle on the seven millions of acres secured to them by the treaty of 1828; yet, from all I have heard of their present intentions, I have reason to believe that they will not question that right.

The Cherokee people will probably remain quiet until they hear what has been done at Washington in relation to the contest for authority in their nation; and, possibly, it may be in the power of the Government to so settle the dispute between the parties as to prevent further difficulties: yet it is feared that no permanent or secure arrangement of this kind can be made, provided John Ross returns to this country.

I have made no effort, of late, to apprehend the murderers of the Ridges and Boudinot, owing to the impossibility of having them tried by the courts of Arkansas. The witnesses in the case of Major Ridge are Cherokees, or married in the Cherokee nation; and would not, from the popularity of the murderers and of their acts, feel secure in appearing against them. In consequence of these circumstances, and the troops passing through the country in search of the murderers having a tendency to keep up much excitement, I judge it would be best that no further efforts should be made to apprehend them.

I have the honor to be, sir, with great respect, your obedient servant,

M. ARBUCKLE,
Brevet Brigadier General U. S. A.

Hon. J. R. POINSETT,
Secretary of War.